

## **FERGUSON TOWNSHIP ZONING HEARING BOARD**

### **Regular Meeting**

**Tuesday, September 26, 2017**

**7:00 pm**

#### **I. ATTENDENCE**

The Zoning Hearing Board held its regular meeting on Tuesday, September 26, 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, absent

Marc Friedenberg—Alternate

Irene Miller—Alternate

##### **Staff:**

Jeffery Ressler, Zoning Administrator

Jeffery Stover, ZHB Solicitor

Other in attendance included: Marcella Bell, Recording Secretary; Ray Stolas, Planning & Zoning Director; Vitaly Maslos, Russian Church of Christ; Vitaly Novikav, Russian Church of Christ; Vadim Aseyev, Russian Church of Christ; Oleg Tishchenko, Russian Church of Christ; Maitil Berezenko, Russian Church of Christ; Robert McCaulley, Russian Church of Christ; and Ruth Cooper, Resident

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

Those that were sworn in at the previous hearing are still sworn in for the current hearing. Mr. Twomley stated that Ms. Miller will stand in as a core voting member of the Board due to absences.

#### **III. RUSSIAN CHURCH OF CHRIST VARIANCE REQUEST – CONTINUANCE**

Mr. Ressler stated that the property that is the subject of this hearing is located at 3645 West College Avenue, tax parcel 24-004-078-0000. The property is owned by the Russian Church of Christ and zoned Rural Agriculture (RA). The applicants constructed a volleyball court with lights and fencing in a Zone A mapped flood zone and riparian buffer without zoning approval. The applicants are requesting a variance to the floodplain conservation requirements of the Zoning Ordinance Chapter 27-801.C to permit the volleyball court, light poles, and fencing in the floodplain. Chapter 27-801.C prohibits all new construction in a floodplain. The applicants are requesting a variance to Chapter 27-213.3 Permitted Uses, to permit the volleyball court, light poles, and fencing in the riparian buffer. A volleyball court, light poles, and fencing are not permitted uses in the riparian buffer.

The applicants constructed a gravel roadway across the Zone A flood zone without zoning approval. The applicants are requesting a variance to Chapter 27-801.C to permit the gravel driveway across the floodplain. A flood assessment report has been completed by the applicant's engineer, Joe Lichty, and has been provided to the Township's consulting engineer for review and comment. There have been two other

variance requests for this property. Both variance requests were granted for relief from the buffer yard standards.

A memorandum from Scott Brown, Township Stormwater Engineer Consultant, stated that he agreed with Mr. Lichty's analysis and conclusion that the volleyball grading and the access drive proposed grading will not cause an increase in the 100-year flood level on adjacent properties. Mr. Brown also wrote that a detailed design for the revised crossing along with the necessary PADEP waterway encroachment permit will be required as part of the pending minor plan revision.

Mr. Twomley reviewed the hearing from the previous month, since there were a few Board members absent. He explained that there were three variances requested by the Russian Church of Christ—a variance for the community garden, a variance for the driveway, and a variance for the volleyball court and lights. All three items currently exist on the property. At the last hearing, the community garden variance was approved and the other two variances were tabled until Mr. Lichty could provide more analysis on the floodplain.

Mr. Lichty stated that the floodplain analysis has been included in the agenda packet and it showed that there would be no increase in flooding in a 100-year storm off of the property. Mr. Lichty stated that he spoke with the people responsible for installing the lighting on the volleyball court. It was concluded that the lighting is all underground wiring, plus it is in conduit. There is a potable well pump on the far side of the floodplain that the applicants use to get electricity for the lights. The light switch is also located near the well and is 12-15 feet above the floodplain. In response to a question from Mr. Twomley, Mr. Ressler stated that the applicants will need to get a lighting permit from the Township as well as an inspection from the Centre Region Codes Office.

In response to a question from Ms. Buda, Mr. Lichty explained that the applicants have to submit a minor plan revision due to a review of the stormwater facilities on site. The stormwater basin was not constructed as designed, so it will need to be redesigned and the lighting, volleyball court, driveway, and community garden will be included on the minor plan revision. Mr. Lichty stated that the analysis also shows that the volleyball court lights are not in the floodplain flow area. Mr. Ressler added that if the variance for the volleyball court lights is granted, the lights would be conditional upon receiving and approving a lighting permit.

There was a lengthy discussion about the hardships the applicant may be facing to request the variances. Mr. Twomley stated that the primary use of the property is for a church, and since the church is already up and running, he does not believe there is a hardship for the volleyball court or the driveway. Mr. Lichty explained that there is no other place to get to the community garden on the property since the property can only be accessed from West College Avenue and the floodplain bisects the entire property. Ms. Buda added that if there was flooding on the applicant's property, it would not affect the property below them since there are 20-foot banks. Mr. Anantheswaran stated that he believes the gravel driveway is a reasonable request for a variance; however, he does not believe there is a hardship for the volleyball court and lights. Mr. Lichty stated that the hardship is that the church uses the volleyball court for youth

activities, and there is no other flat area to put the volleyball court. Mr. Anantheswaran stated that the volleyball court is in the floodplain as well as the riparian buffer, and a simple inconvenience is not good enough to grant the variance. Ms. Buda stated that the term hardship isn't about whether something is necessary or not—the hardship is that the applicant could not place the volleyball court on any other part of the property. In response to a question from Mr. Twomley, Mr. Lichty stated that the applicants could have put the volleyball court where the community garden is now located; however, the applicant wanted to keep the volleyball court close due to the youth activities, and the community garden is about 1,200 feet away from the church building. Mr. Ressler explained that the ordinance says that all new construction and development are prohibited in a floodplain. The applicants have shown that what they've built will not harm the floodplain; however, the Township would not have given the applicants a permit even if they could show that, and they would have to come for a variance anyways. Ms. English stated that since the applicant has been in front of the Zoning Hearing Board prior to these variance requests, she has a hard time understanding that the applicants did not know they needed permits for these uses. Mr. Lichty explained that the applicants thought permits were for buildings and structures and did not realize they needed a permit for a gravel driveway. He went on to explain that driveways and roads cross floodplains all over the place in the Township and do not increase any downstream flooding on or off properties.

A motion was made by Ms. Buda and seconded by Ms. Miller to grant the variance to Chapter 27-801.C to permit the gravel driveway across the floodplain on the condition that the revised plan is approved by the PADEP and given a waterway encroachment permit. The motion carried 3-2.

The discussion centered around the volleyball court and lights variance request. Ms. Buda stated that since the church could technically move the volleyball court and lights out of the floodplain, she did not see a hardship. There was a lengthy discussion about the definition of a hardship and that monetary value is not considered a hardship. Attorney Stover stated that the hardship has to be a physical feature, not a financial aspect. A few members of the Board suggested the applicants either move the volleyball court and lights to an area not in the floodplain, purchase a non-permanent volleyball net that can be take down and put up when needed, or use other facilities in the community to play volleyball. In response to a question from Mr. Twomley, one of the members of the church stated that the volleyball court and lights have been constructed for about seven years. Mr. Ressler explained that the community garden, volleyball court and lights, and the gravel driveway were discovered because the Township met with the applicants regarding the stormwater basin. He went on to say that most of the Township's enforcement is complaint driven instead of actively patrolling.

A motion was made by Ms. Buda and seconded by Ms. Miller to grant the variance to Chapter 27-801.C to permit the volley ball court, light poles, and fencing in the floodplain on the condition that the lights meet the permit requirements as well as an electrical inspection. The motion carried 4-1.



**IV. APPROVAL OF THE MEETING MINUTES FROM THE AUGUST 22, 2017  
REGULAR MEETING.**

The August 22, 2017 meeting minutes were not included in the Zoning Hearing Board agenda.

A motion was made by Ms. Miller and seconded by Mr. Anantheswaran to postpone the approval of the August 22, 2017 Zoning Hearing Board meeting minutes. The motion carried unanimously.

**V. ADJOURNMENT**

The Zoning Hearing Board members discussed the alternative meeting dates for the months of October, November, and December. There was a consensus that there would be a quorum for the Zoning Hearing Board to meet on October 17, 2017, November 21, 2017, and December 19, 2017.

With no further business to come before the Zoning Hearing Board the September 26, 2017 meeting adjourned at 8:03 p.m.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'Swamy Anantheswaran', written over a horizontal line.

Swamy Anantheswaran, Secretary For  
the Zoning Hearing Board

Date approved by the Board: October 17, 2017