

FERGUSON TOWNSHIP ZONING HEARING BOARD

Regular Meeting

Tuesday, January 23, 2018

7:00 pm

I. ATTENDANCE

The Zoning Hearing Board held its regular meeting on Tuesday, January 23, 2018 at the Ferguson Township Municipal Building. In attendance were:

Board:

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

Staff:

Jeffery Ressler, Zoning Administrator
Jeffery Stover, ZHB Solicitor

Others in attendance included: Marcella Bell, Recording Secretary; Ray Stolas, Planning & Zoning Director; Lindsay Schoch, Community Planner; Joseph Green, Board of Supervisors Solicitor; Peter Crowley, Circleville Road Partners L.P. Validity Challenge; Dwight Ferguson, Circleville Road Partners L.P. Validity Challenge; Charlie Suhr, Circleville Road Partners L.P. Validity Challenge; Derek Anderson, Circleville Partners L.P. Validity Challenge

II. CIRCLEVILLE ROAD PARTNERS, L.P.—VALIDITY CHALLENGE CONTINUANCE

Attorney Ferguson explained that he, Attorney Green, and Attorney Suhr had a discussion prior to the hearing and intend to finish the hearing tonight and will have a proposed briefing schedule so the Board has enough time to consider the evidence and render a decision.

Attorney Ferguson provided an exhibit containing a diagram that shows all of the owners of parcels within Circleville. Circleville Road Partners, L.P. remains the largest property still among the Turnberry Development.

Attorney Ferguson stated that there are three bases that he would like to discuss regarding the validity challenge to the Traditional Town Development (TTD) Ordinance. He explained that the first is that as amended, the ordinance is now void for vagueness, specifically with regard to modifications. The second is that it is not based on rational planning principals. The third is that it constitutes spot zoning.

Attorney Ferguson explained that regarding the first point, the TTD amendment creates a modification provision which fails entirely to consider and coordinate the previously existing modification provisions that were already in the ordinance. It is vague because it isn't clear as to which of the standards applies if someone wishes to have a modification from the TTD modification provisions.

Regarding his second point, Attorney Ferguson stated that the amendment itself is not based upon rational planning principals, but rather other objectives which are not consistent with the legislative purposes of the governing body of Ferguson Township. He explained that the Municipalities Planning Code (MPC) says that the governing body of each municipality, in accordance with the conditions and proceedings set forth

in the MPC, can enact, amend, and repeal zoning ordinances to implement comprehensive plans and to accomplish the purpose of the MPC. Attorney Ferguson stated that the MPC states that the purpose of zoning is to promote, protect, and facilitate any or all of the following: public health and safety, morals, general welfare, and coordinate practical community development. Attorney Ferguson stated that there is no purpose in zoning to facilitate the development on one parcel for one developer. He referred to the TTD text amendment application submitted by Pine Hall. He stated that on page one of the application, the applicant is proposing that changes be made to ordinance section 27-701 to specifically allow for the development envisioned by the Pine Hall concept plan and to specifically authorize the Board of Supervisors to improve modification of design standards applicable to a TTD.

To Attorney Ferguson's third point, he stated that each of the Pine Hall concept plans are quite intertwined. He asserted that this is exactly what spot zoning and contract zoning is—when a parcel, indistinguishable from the properties around it, is treated completely different from the other properties around it. Attorney Ferguson stated that the implemented design wasn't for the general health, safety, and welfare of Ferguson Township.

Attorney Suhr introduced himself as an attorney with Stevens and Lee on behalf of two entities, Residential Housing LLC and Residential Housing Development. He stated that he will have three witnesses present testimony: Mr. Derek Anderson, Mr. Peter Crowley, and Mr. Michael Pratt. Exhibit RHD-1 Binder of Documents and Exhibit RH-2 Binder of Documents was provided to the Zoning Hearing Board.

Mr. Anderson provided testimony regarding the agreement of sale that was entered into by Residential Housing to purchase the Pine Hall property, the TTD ordinance and amendment, the property surrounding the Pine Hall property and the TTD, the approved Turnberry Plan, the approved Pine Hall Plan, the Pine Hall Concept Master Plan submissions, and the process of the TTD text amendment. At the end of Mr. Anderson's testimony, Attorney Ferguson cross-examined him.

Mr. Crowley provided testimony regarding the TTD ordinance and amendment, the area surrounding the TTD, the Pine Hall Concept Master Plan submissions, the issue of modifications versus the text amendment, the relation between the Pine Hall Development and the Turnberry Development, and the Pine Hall Charrette process.

Mr. Pratt provided testimony regarding the Township Zoning Ordinance, the TTD ordinance and amendment, the Pine Hall project, the Turnberry Development, the area surrounding the TTD, the approved Pine Hall Plan, the TTD text amendment to allow personal care homes or assisted living facilities, and the density required in the TTD Ordinance. At the end of Mr. Pratt's testimony, Attorney Ferguson cross-examined him.

In response to a question from Ms. English, Attorney Suhr explained that during the design process, the Pine Hall Developers planned to request modifications because the modifications from the old approved Pine Hall Plan were not applicable to the new Pine Hall Master Plan because the plans were very different. At that time, Turnberry representatives stated that the Township could not grant modifications because the current ordinance at that time did not allow the Board of Supervisors to do so. The Township agreed that the ordinance did not explicitly allow the Board of Supervisors

to grant modifications. The Pine Hall Developers moved forward with requesting a text amendment to the TTD Ordinance. Since then, Circleville Road Partners has challenged the validity of the enacted TTD Ordinance.

Attorney Ferguson provided his own answer to Ms. English's question. He explained that the modifications under the law only applied to design standards. If it's another type of requirement in the zoning ordinance that is not a design standard, a variance from the Zoning Hearing Board needs to be requested. Attorney Ferguson stated that he wrote letter after letter to the Township that the modifications being requested by the Pine Hall Developers are for things other than design standards, which is not allowable under the law. Attorney Ferguson argued that if the Pine Hall Developers presented a concept plan to the Board of Supervisors and asked them to consider each change in a modification process, the Board of Supervisors had the power to say yes or no. Instead the Pine Hall Developers gathered all the modifications they needed and asked the Board of Supervisors to adopt them as law via a text amendment. That stripped the Board of Supervisors of the power to say no, and it also stripped the Turnberry Development and any other objector of the power to appeal those changes.

Attorney Suhr gave his closing remarks. He explained that here tonight is a substantive validity challenge of the TTD text amendment. He stated that the changes to the TTD ordinance are clear and will meet all of the elements, intents, and purposes of the TTD. Circleville Road Partners L.P. has the burden to show that the Board of Supervisors did not act properly. Attorney Suhr stated that he did not hear any evidence in either hearings that the amended TTD Ordinance would harm Circleville Road Partners L.P. It was of Attorney Suhr's opinion that the amended ordinance would actually benefit Circleville Road Partners and other parties of the TTD that are not developed yet. Attorney Suhr referred to the modification procedure in the appendix of the ordinance. He stated that even though there was not a modification procedure in the actual ordinance, it was in the appendix of the design standards and clearly allows for modifications of the design standards within the appendix. It was there before and it is there now. The problem was that there were design standards in the zoning ordinance and in the design standards appendix, which is why the Township said modifications for the design standards can't be done. Attorney Suhr stated that if one reads the MPC language regarding the modification process and section three of the amended TTD ordinance, the operative language is identical between them. It was of Attorney Suhr's opinion that by doing that, it is rational planning. He stated that the appeal alleges that the amended TTD ordinance conflicts with the comprehensive plan. He referred to section 303.c of the MPC and stated that it specifically says that any action of the governing body inconsistent with the comprehensive plan cannot be voided on that basis. Attorney Suhr stated that he believes there was ample testimony to prove that Pine Hall can be developed to be consistent with the TTD and the various design features. It was also alleged to be void of rational planning principles because the amended TTD ordinance is specific to one site, but clearly the ordinance applies to the whole TTD district. Which is also why it is incorrect to say the amended TTD Ordinance is spot zoning. Attorney Suhr stated that failure to consider public health, safety, and welfare was mentioned, however, the charrette process took place to allow the Pine Hall developers to have conversations about what kind of plan works with Pine Hall, the neighboring communities, and the Township. There was an allegation that the amendment was arbitrary, capricious, and

abuse of discretion of the Board of Supervisors. It was of Attorney Suhr's opinion that it isn't the case since the charrette process took place and there was community involvement.

Ms. Buda asked that the list of people who attended the Pine Hall Charrette be provided for the Board to review.

Attorney Green stated that he would like to make a presentation to the Zoning Hearing Board, but for time's sake, he requested a third hearing. He hopes to close the record at the third hearing. Attorney Ferguson stated that he will provide closing remarks at the third hearing.

After a short discussion, there was consensus to hold the third meeting on February 20, 2018 at 8:00 p.m.

A motion was made by Mr. MacNeely and seconded by Ms. English to continue the hearing until February 20, 2018. The motion carried 5-0.

(Later on, it was discovered that there was a scheduling conflict for the Ferguson Township Main Meeting Room. The rescheduled Zoning Hearing Board meeting will take place on February 20, 2018 at 7:00 p.m. in the COG Forum Room.)

III. APPROVAL OF THE MEETING MINUTES FROM THE DECEMBER 19, 2017 REGULAR MEETING

A motion was made by Ms. English and seconded by Ms. Buda to approve the December 19, 2017 Zoning Hearing Board meeting minutes. The motion carried 5-0.

IV. ADJOURNMENT

With no further business to come before the Zoning Hearing Board the January 23, 2018 meeting adjourned at 9:32 p.m.

RESPECTFULLY SUBMITTED,


Michael MacNeely, Secretary
For the Zoning Hearing Board

Date approved by the Board: 2/27/2018