

FERGUSON TOWNSHIP ZONING HEARING BOARD
REGULAR MEETING MINUTES
Tuesday, June 13, 2023
7:30 p.m.

ATTENDANCE

The Ferguson Township Zoning Hearing Board held a regular meeting on Tuesday, June 13, 2023, at the Ferguson Township Municipal Building. In attendance were:

Board

Susan Buda, Chair
Stefanie Rocco, Vice Chair
Robert Strouse
Jeff Stover, ZHB Solicitor

Staff

Jeff Ressler, Zoning Administrator
Liza Ruhf, Recording Secretary
Jenna Wargo, Director of Planning and Zoning
Centrice Martin, Township Manager
Elizabeth Dupuis, Township Solicitor

Others in attendance: Alex Sahakian, Applicant and owner 1004 West College, LLC; Charles Suhr, Esquire, representing 1004 West College, LLC; Missy Schoonover, Executive Director Centre County Housing and Land Trust; unknown man

I. CALL TO ORDER

The Ferguson Township Zoning Hearing Board Regular Meeting was called to order on Tuesday, June 13, 2023, at 7:33 p.m.

II. PLEDGE OF ALLEGIANCE

III. CITIZEN INPUT

No citizen input was heard.

IV. INTRODUCTION OF BOARD MEMBERS

V. SWEARING IN OF THOSE WHO WISH TO TESTIFY

Alex Sahakian, Jenna Wargo, and Jeff Ressler were sworn in on May 23, 2023, to testify.

VI. ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING AN APPEAL

Mr. Jeff Stover, Esquire, had presented the basis for granting an appeal on May 23, 2023.

VII. CONTINUED APPEAL REQUEST OF 1004 WEST COLLEGE, LLC, 1004 W. COLLEGE AVENUE

Ms. Dupuis opened with discussion of the determination that Ms. Wargo had made regarding the Land Development Plan; Ms. Wargo stated that the final determination had been made after the third submission of the Plan and that they had not received enough factual data at that time concerning the proposed age-restricted units. They then had received the response from the Applicant that it would not be possible for them to require that the whole unit be age-restricted. Staff had then informed the Applicant that the incentive could not be utilized, as that was not provided for in the Ordinance. Ms. Wargo explained that upon every submission of a land development plan she distributed it to all reviewers for the Township and they had two (2) weeks

to review the submission and provide feedback; then she would compile the comments from which she would draft a memo back to the Applicant. Ms. Wargo also stated that she previously had informed the Applicant, via letter, that Workforce Housing would be applicable and had provided the fees as they were in 2022; the Applicant had chosen the fee in lieu option. Ms. Wargo explained that after the third submission, the fee schedule for 2023 had been adopted by the Board of Supervisors, with the new amount, which had she had provided to the Applicant. Ms. Wargo continued that historically any fees due for a Land Development Plan, aside from the application fees, were not locked in at submission, because the first submission was never the final plan; fees were imposed at the time of approval according to the fees in place at that time. Mr. Suhr questioned Ms. Wargo on her duties as a Zoning Officer; he drew her attention to the duties listed in the Township Ordinance found in Chapter 27-901.1.A *Duties of the Zoning Administrator*. Mr. Suhr enquired if determining whether an ordinance was valid or not was an enumerated duty on the list; Ms. Wargo replied that it was not. Mr. Suhr proceeded to question Ms. Wargo as to the authority that she had relied upon when she had declared a portion of an ordinance invalid in the determination letter to the Applicant. Ms. Wargo stated that she had been enforcing the express language of the Ordinance, notwithstanding whether it was valid or not, as what the Applicant had proposed had not been provided for in the Ordinance. Although, she continued, that based on her review of the Fair Housing Act the necessary requirements to age restrict housing were not being met and furthermore, the exemption applied to 55 and older housing only. Ms. Wargo read from the Act that any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid. Mr. Suhr questioned Ms. Wargo again as to her authority as a Zoning Officer to research laws outside of the zoning ordinance. Ms. Wargo replied that it was a part of her job to ensure that ordinances were in line with federal and state laws and that the aforesaid incentive had interested her as to whether the Township could provide it legally or not. Mr. Suhr outlined the issues with the height incentive; one, that the restriction would apply to the entire unit, and two, regarding the age range. Mr. Suhr discussed the previous testimony regarding the language in the Ordinance and the comprehensive update in 2019. He pointed out that there had been three (3) definitions of “age-restricted” in the past ten (10) years and questioned which was intended to be the correct one. Mr. Suhr enquired as to how HUD defined “age-restricted”; Ms. Wargo replied that they had different requirements for 55-and-older and for 65-and-older, but the overall implication was to point to laws superseding Township laws, those being of federal and state origin. Ms. Wargo

continued that it was common for municipalities to point to state and federal laws *within* their zoning ordinances.

Ms. Dupuis wished to clarify the height incentives available at the time of submission. Ms. Wargo read the two (2) incentives that were available in March of 2022 from Chapter 27-304.3.B; the first regarding Workforce Housing, whereby the maximum height of 55 feet could be increased to 65 feet to accommodate bonus market-rate units, and the second regarding an additional 20 feet if 15% of the units were established and maintained as age-restricted units. Ms. Dupuis enquired which incentives remained in Ordinance 1076; Ms. Wargo replied that the only remaining one was the Workforce Housing incentive. Ms. Dupuis reiterated that the determination was based on “all” residents being in a certain age range and Ms. Wargo verified.

VIII. VALIDITY CHALLENGE OF 1004 WEST COLLEGE, LLC, 1004 W. COLLEGE AVENUE

Ms. Wargo handed out exhibits regarding Workforce Housing. Ms. Wargo stated that she had learned that when an ordinance was enacted, especially in relation to Workforce Housing, a need needed to be identified. Therefore, she had included the Housing Market Study for Centre County Housing and Land Trust, where she had highlighted the sections involving Ferguson Township and identifying the need for more affordable workforce housing within the Centre Region. She pointed out that that was how the need had been identified and why the Workforce Housing Ordinance had been adopted. The newest study would be released at the end of June and it showed that there continued to be an affordability issue in the region and recommended that a lot of the region’s municipalities enact workforce housing ordinances. Ms. Wargo reported that in Ferguson Township the Workforce Housing Ordinance was applicable in the Traditional Town Development and the Terraced Streetscape zoning districts. Ms. Dupuis clarified that the Applicant was not choosing to invoke the workforce housing incentive, but that they were required to provide workforce housing still. Ms. Dupuis revisited the options a developer had to accommodate the workforce housing units: on-site, off-site, or pay a fee in lieu. Ms. Wargo explained that when the Workforce Housing Ordinance had been amended in 2021, the Township had established the fee in lieu for workforce housing units, in collaboration with the Land Trust, and that since that time, with the updated information from the Director of Code (exhibit from the International Code Council), the Township had calculated the fee in lieu accordingly. She explained that the Township had used the cost of construction for the minimum building size and the cost for the minimum lot size for the calculations, whereas many municipalities chose the maximum building and lot sizes in their calculations. Ms. Dupuis elucidated that the intent of the fee in lieu was to replace the requirement of building the units. Ms. Wargo discussed that in actuality, it would be more expensive to build the units, as the fee in lieu did not account for

tapping fees, permitting fees, etc. Ms. Wargo reported that College and Harris Townships and the Borough of State College all required workforce housing.

Ms. Dupuis enquired about the hearings that would have been held before the amendment to the Ordinance. Ms. Wargo reported that there had been multiple public meetings, work sessions, joint meetings with the Planning Commission and the Board of Supervisors, and that they had established subcommittees to provide input. Ms. Wargo stated that the Ordinance also read that the fee in lieu had been established by resolution. Ms. Dupuis emphasized that Ms. Wargo had presented the specifics to the Board of how the fee in lieu would be calculated and that they had reviewed it and approved it.

Mr. Suhr revisited the reason why the Ordinance did not include the fees themselves; Ms. Wargo explained that that would involve amending the Ordinance annually, which would be a very long and tedious process, therefore, in Ferguson Township all fees were included in the fee schedule made by resolution, as resolutions were easier to update with annual changes. Mr. Suhr enquired if the previous year's calculations had been made in the same manner; Ms. Wargo concurred and furthered that in 2023 the Board had opted to use the actual market rate cost for construction at the time, yet to base it on 75% of that cost. In other words, the Board had adopted a fee at a reduced amount for what it would have cost to build the units.

Mr. Suhr discussed the rationale for having a developer provide such workforce housing. Ms. Wargo reported that most municipalities did not have the staffing nor the capacity to provide workforce housing, which would be why they would offer incentives for doing so. Mr. Suhr stated that developers were required in Ferguson Township to build workforce housing in certain districts and not others and suggested that the Township could enact a tax that would spread out the responsibility. Ms. Wargo responded that no one forced a developer to develop land and this requirement was similar to all public improvements that were required of land developments, although incentives were provided for workforce housing, but not to provide other public amenities like sidewalks, sewer, water, trees, etc.

Mr. Suhr enquired if Ms. Wargo was directed by the Board of Supervisors to conduct the analysis for the fee in lieu annually. Ms. Wargo replied that she was not directed, but that department heads were provided the fee schedule to update yearly and that she looked at all of the fees holistically, including zoning permit fees, land development fees, etc., and that she always did the workforce housing calculation, looking for any significant changes, that she would then report to the Manager. Ms. Wargo pointed out that the numbers used for calculation were a reflection, not a projection, of the cost data. Ms. Wargo also stated that she wanted to ensure that the Board knew that the Township was invested and was looking at the numbers annually for accuracy,

whether they reflected an increase or a decrease in costs. Mr. Suhr enquired about the Township fund in which the fees in lieu would be put; Ms. Wargo stated that the policy for its use had not been decided by the Board, as no fees had been paid into it yet. Ms. Wargo specified that the workforce housing units, along with the fund, would be managed by the Centre County Housing and Land Trust, within the confines of the policy set by the Board. Mr. Suhr clarified that if a developer paid the fee in lieu, then they would not get the incentive; Ms. Wargo corroborated and explained that the incentive was to encourage the building of the units. Mr. Suhr then clarified that if the Applicant wished to take advantage of the Workforce Housing incentive, that the height could be increased to 65 feet and that they would have to resubmit the Land Development Plan; Ms. Wargo again corroborated.

Mr. Suhr enquired as to when or how an applicant would know if the fee had changed. Ms. Wargo replied that given that the resolution was updated annually, it could be assumed the fee would change annually. Mr. Suhr revisited that the resolution did not state that the amount of the fee would be determined when it was paid; Ms. Wargo replied that it stated that it was paid prior to the issuance of the zoning permit. Mr. Suhr clarified that it did not state that the amount of the fee would be the amount at that *time*.

Ms. Dupuis wished to clarify that the Township's desire was to have the units built and that there were other incentives for doing so; Ms. Wargo verified that the other incentives involved parking for, and the proximity of, units built on-site.

Mr. Stover stated that the parties had agreed that briefs would be submitted to him and due on July 18, 2023. The next hearing would be held on August 8, 2023, at which time argument from the parties would be accepted, and then another hearing held on August 22, 2023, for decision. The hearing was adjourned until August 8, 2023, at 7:00 p.m.

IX. ADJOURNMENT

The Ferguson Township Zoning Hearing Board Regular Meeting was adjourned on Tuesday, June 13, 2023, at 9:28 p.m.

RESPECTFULLY SUBMITTED,



Swamy Anantheswaran, Secretary
Ferguson Township Zoning Hearing Board