

HILLSBOROUGH TOWNSHIP BOARD OF ADJUSTMENT
PUBLIC MEETING MINUTES
December 04, 2013

Chairman Fenwick calls the Board of Adjustment meeting of December 04, 2013 to order at 7:30 p.m. All stand for the Pledge of Allegiance. The meeting takes place in the Courtroom of the Municipal Complex.

Chairman Fenwick announces the meeting has been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 ("Sunshine Law").

ROLL CALL

Michael Volpe – *Resigned*

John Stamler – Present (*left at 9:13 p.m.*)

Helen Haines, Vice Chairman – Present

Marian Fenwick, Chairman – Present

Walter Dietz, III – Present

Frank Valcheck – Present

Shawn Lipani (#7) – Present (*arrived to dais at 9:13 p.m.*)

Frank Herbert (Alt. #1) – Present

Curtis Suraci (Alt. #2) – Absent

Kenneth Hesthag (Alt. #3) – Present

Michele Boronkas (Alt. #4) – Absent

Also in attendance: David Kois, Deputy Director of Planning/Zoning Official and Board of Adjustment Administrative Officer/Secretary; Mark S. Anderson, Esq., Board Attorney (Woolson Sutphen Anderson, P.C); and Lucille Grozinski, C.C.R.

ACCEPTANCE OF MINUTES

None

ACCEPTANCE OF RESOLUTIONS

Luis PEREIRA – File #BA-13-08

A motion to approve is made by Mr. Dietz, seconded by Vice Chairman Haines.

Roll Call: Mr. Valcheck – yes, Mr. Dietz – yes, Mr. Herbert – yes, Mr. Hesthag – yes, Vice Chairman Haines – yes, Motion carries.

BOARD OF ADJUSTMENT BUSINESS

Stacy Grab, File #BA-13-07 - Extension of Time Request

Chairman Fenwick states the Applicant has requested an extension through March 31, 2014, without further notice.

Mr. Anderson clarifies for the Board that the adjourned hearing date requested is for January 08, 2014 while the time period in which the Board has to act is until March 31, 2014. He states the matter of with or without notice is at the discretion of the Board and notes it has been a long time since notice was originally provided.

There is no limitation within the law keeping the Board from providing this without further notice.

Mr. Dietz asks if anyone in the audience is in attendance to hear this application. No one responds.

Mr. Dietz says seeing that no one is present for this application tonight there is no reason why this applicant would need to re-notice.

A motion to accept the request for extension and allow the applicant to adjourn to January 08, 2014 without re-notice was made by Vice Chairman Haines and seconded by Mr. Dietz. All in favor – Aye; Opposed - None.

BOARD OF ADJUSTMENT BUSINESS

None

BUSINESS FROM THE FLOOR

None

PUBLIC HEARING - APPLICATIONS

Stacy GRAB – File #BA-13-07 – Block 174.04, Lot 59 (formerly known as Block 174A, Lot 6) – 9 Starview Drive.

Chairman Fenwick states for the record that the application has been adjourned to January 08, 2014 without further notice.

NY SMSA Limited Partnership – VERIZON – (Hillsborough 7) – File #BA-13-14 – Block 183, Lot 38.01 and Block 183.01, Lot 1 - 201 Hamilton Road. Carried from November 06, 2013 without further notice.

Mr. Kois introduces the Application

David Soloway, Esq. of Vogel, Chait, Collins & Schneider, P.C. reviews where the meeting left off last time with Mr. Cowan's testimony.

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Mr. Soloway notes they have provided a rendering of another color option for the golf course flag.

Mr. Cowan discusses the new **Exhibit A-11**, another version of the proposed flag. It changes the proposed flag color to beige with the golf course logo. The size of the flag has also been reduced. The exhibit also depicts an alternate logo for the golf course that contains lettering. The Board discusses which flag design and size they like the best.

Tim Veracco, of Franklin Drive comes to the front to make a comment.

Mr. Anderson clarifies to the resident that this part of the meeting is for questions for Mr. Cowan only and he may not make a comment until later in the meeting.

Mr. Veracco asks why there is a flag at all and if it's going to be lit up at night.

Mr. Soloway responds that the original application was for an American Flag that must be lit at night but the Board took issue with that so the Applicant has presented this alternate flag that would not be lit at night.

Mr. Veracco has no further questions.

Mr. Eden of Anne Street asks if the elevation where the tower will be is a higher or lower elevation of the golf course property.

Mr. Cowan notes that the Applicant's Engineer would be better able to answer that.

Mr. Ferrante testifies that it is one of the higher elevations on the property, but not the highest.

Mr. Eden notes that the property drops off into a valley so the tower is up quite high, much higher than the tree line so it will be very visible to the homeowners. He clarifies his question, asking if it will be more visible to homeowners.

Mr. Cowan addresses this question; he notes they used a computer program to determine that there is a visibility of the top of the pole from Anne Drive and Franklin. It is visible only from a very limited area and the current vegetation provides an adequate buffer.

Mr. Eden and Mr. Cowan further discuss elevation and visibility.

The Board notes that these questions are more like testimony.

Mr. Ferrante adds to the discussion about elevation.

There are no other questions for Mr. Cowan.

There are no comments from the Board.

Chairman Fenwick opens the public comments portion of the meeting, Tom O'Donnell of Anne Street is sworn in.

Mr. O'Donnell notes that to get the variance, the application needs to have public advantages but as a resident of the area, he has not lost a call in the vicinity of the golf course. He does not think it is a public benefit.

Mr. O'Donnell goes on to talk about the need to use this tower technology. Mr. O'Donnell provides an article from the newspaper, marked as **Exhibit O-1**, about newer technology being used in Montgomery. This technology was discussed at the last meeting but Mr. O'Donnell summarizes the argument, emphasizing that it is not visibly obtrusive like the tower and that a neighboring town is already using it.

Mr. Soloway objects to using this article to demonstrate this is the technology of the future as it is hearsay.

Mr. O'Donnell clarifies that he wants the Board to be aware of the alternative technology a neighboring community is using.

Mr. Anderson informs the Board that this is indeed hearsay as Mr. Soloway noted but the Board can take hearsay into consideration if they believe it is of value to the Board.

The Board discusses whether or not they will read the article.

Mr. Dietz makes a motion to deny the article marked O-1. It is seconded.

Roll Call: Mr. Valcheck – yes, Mr. Dietz – yes, Mr. Stamler – yes, Mr. Herbert – yes, Mr. Hesthag – yes, Vice Chairman Haines – yes, Chairman Fenwick – yes. Motion carries.

Mr. O'Donnell goes on to comment about potential impact to home values, mentioning articles he has read about it. He wonders if anyone has looked specifically at the Claremont community in this aspect.

Mr. Anderson clarifies that the Applicant is not obligated to address that, though any member of the public may raise that point.

Mr. O'Donnell indicates he feels the tower would be detrimental to the value of homes in his neighborhood. He continues on to talk about the proposed flag. As a homeowner, he says he would rather see an empty pole than a flag. If a flag is necessary, he would prefer a Township flag so that it is not promoting the golf course.

Mr. O'Donnell makes a comment about the location of the tower, saying he feels the golf course owner is favoring his golfers rather than the homeowners in the community. It should be placed closer to the golf course maintenance shed so that it is less visible. He says moving it a few feet should not have a significant impact on the range of the tower as he personally has had no issues with service at the golf course without the tower at all.

Mr. O'Donnell asks that when the technology becomes obsolete is there a bond to have the tower removed from the property when it is no longer being used?

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Mr. Soloway notes there is a requirement in the ordinance for that type of bond. He had asked for it to be waived because they are difficult bonds to obtain. It is a condition of lease that Verizon Wireless removes the tower when it is no longer in use.

Mr. Soloway goes on to say it would not be an inappropriate condition for the Board to impose.

Tim Veracco of Franklin Drive is sworn in.

Mr. Veracco makes a comment about the Township Ordinance and how this application does not meet the regulations at all, especially in relation to the size of the flag.

There is some discussion about the size of the flag and antennas. Mr. Veracco reiterates his comment that the tower just doesn't meet the ordinance.

Mr. Alcantara of Franklin Drive is sworn in.

He makes a comment about the size of the trees around his property. They are much shorter than the Applicant has testified to and Mr. Alcantara says he can see straight to the golf course from his property.

Mr. Eden of Anne Street is sworn in.

Mr. Eden is concerned that by granting this variance for such a high tower, it would be precedent to grant similarly sized variances in the future.

Mr. Dietz clarifies that the Board does not set precedent; each piece of property is unique and individual.

Mr. Veracco comes up again to make another comment. He wishes the community had been more informed of this application.

Mr. Dietz informs him that everyone within 200 feet of the property receives notice and it is published in the newspaper.

Mr. Veracco concludes that he thinks the sight line of the tower should have been considered when giving out notice and 200 feet was just too little.

No more comments from the public.

A Board member brings up the view of the tower when there are no leaves on the trees. He suggests the Board can impose a condition that restricts flying of the flag from November 15th to March 15th.

Mr. Dietz wonders why they should approve the flag anyway. He says he does not want to approve the flag at all. The Board discusses the need for the flag.

Mr. Soloway talks about all the positive criteria for this application and notes if there is any negative criteria it is aesthetic only. He states for the record that the property owner is not willing to erect the tower without a flag.

Mr. Soloway notes that technically the flag could be considered a sign, which would deviate from the township sign ordinance.

Mr. Anderson does not think the Board can waive ordinance requirements that are not directly related to land use like the bond, the request for structural report, and insurance policy. He goes on to say that the Board should consider the matter only, not the wishes of individuals, like the property owner who wants a flag.

Mr. Anderson clarifies that the flag and the tower are not necessarily related. He notes if the Board thinks it reduces the visual impact by adding a flag, they may approve it. But if the Board thinks the flag adds to the intrusiveness, none of the technical testimony presented supports the actual flag itself.

Vice Chairman Haines notes the original application does not mention the word "flagpole."

A Board Member believes that limiting the time of year at which the flag can be flown is a good compromise.

Mr. Dietz states he is against the flag.

Mr. Herbert agrees that the flag would be a detriment to the community.

The Board and Mr. Kois discuss the need for a bond.

Mr. Hesthag says it is obvious the public does not view the flag as a benefit.

Mr. Dietz motions to approve the application with a height variance and preliminary and final site plan approval but without the flag, seconded by Vice Chairman Haines.

Roll Call: Mr. Valcheck – yes, Mr. Dietz – yes, Mr. Stamler – yes, Mr. Herbert – yes, Mr. Hesthag – yes, Vice Chairman Haines – yes, Chairman Fenwick – yes. Motion carries.

At 9:13 p.m., Chairman Fenwick states for the record that Mr. Stamler will be leaving and Mr. Lipani will be joining the Board on the dais for the remainder of the meeting.

Salvatore and Karen PULEO – File #BA-13-15 – Block 171, Lot 61.01 – 681 Montgomery Road

Mr. Kois introduces the application.

Daniel Matyola, Esq. of Stanley & Matyola, representing the Applicants, states that this application is for a private tennis court on a residential lot that is just shy of 15 acres and is a flag lot.

For the record, he notes that abutting property owners were noticed and none had interest in purchasing or selling property.

All witnesses are sworn in at the same time: Salvatore Puleo, Robert Heibell, P.E. and Richard Coppola, P.P.

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Mr. Heibell's qualifications as an Engineer and a surveyor are accepted by the Board.

Mr. Heibell describes the history of this application, noting tennis courts are currently permitted in the MZ zone. He goes on to talk about the variances the Applicant is requesting.

Mr. Heibell testifies that the current impervious surface is over the maximum but the current homeowners have added nothing impervious since purchasing the house.

Mr. Heibell goes over the current impervious surfaces on the lot including the flag lot stone and macadam driveway, the house, sidewalk and walkways, a barn, a small patio, and a concrete pad previously used as a dog run.

Mr. Heibell states the proposal is for a 60 ft. x 120 ft. tennis court, which would add an additional 7,200 sf. to the impervious coverage and reviews the following:

The Applicant submitted to the Somerset County Planning Board but the County Planning Board decided no further action needed be taken on their end.

Somerset-Union Soil Conservation District granted an exemption for this application.

This application is not exempt from the D&R Canal Commission so to comply with water quantity and ground water recharge, storm drainage control is proposed. Verbally, D&R stated water quality would not be required. The proposed location of the tennis court has the least number of trees on the property. Though six trees would still need to be removed.

The memo from the Fire Marshal, dated October 21, 2013, states he has no comments at this time.

Two of those trees are in excess of 6 inches so the Tree Mitigation Ordinance would apply but for the fact that single family houses are exempt from this Ordinance.

The Environmental Commission, however, recommended to the Board of Adjustment that the Applicant add additional landscaping. The Applicant would not object to that condition of approval.

The Environmental Commission also recommended that the Board address the current impervious surface to see if some could be removed.

Mr. Heibell addresses the variance required for the proposed lights, which are not addressed in the township ordinance.

The proposed height is standard for parking lots with a total of 6 lights, 3 on each side. The foot candles proposed is 35 ft, thus requiring 2 waivers.

There is no report from Mr. White.

The Board discusses the pond on the property.

Mr. Dietz asks about the lights.

Mr. Heibell clarifies that the lights will be manually operated and turned on only when the tennis court is in use. The Environmental Commission asked the lights to be shielded so that is what is proposed by the Applicant. There will be no light pollution. The lights are focused downward.

There will be a 10 foot chain-link fence around the tennis court.

There is no proposed landscaping. The Applicant would agree to replace the trees being removed elsewhere on the property.

The Board and Mr. Heibell discuss the adjoining private property owner and the buffers between their properties. No public questions for this witness.

Mr. Matyola calls Mr. Coppola, P.P. as a witness. Mr. Coppola is sworn in and describes his qualifications which are accepted by the Board.

Mr. Coppola notes that this property is almost entirely surrounded by County owned open space lots and the privately owned surrounding properties are all undersized. Because it is a flag lot, it is almost entirely shielded from view from the road. The property is heavily wooded.

Mr. Coppola discusses the proposed underground retention area.

Mr. Coppola addresses the ordinance provisions for flag lots. The minimum requirement for the flag portion of a flag lot in the MZ zone is 10 acres whereas the Applicant's property is 12.5475 acres and exceeds the minimum requirement.

Mr. Coppola testifies that there is no detriment to the public good or the ordinance provisions of the township.

In regards to the impervious surface coverage, construction of the underground retention area will help the property satisfy the purpose of the MZ District and the Stormwater Management Plan, as required by the MLUL.

There are no design guidelines for lighting but the ones proposed will be shielded and the fixture will mitigate any spillage of light beyond the tennis court. They will be turned on and off manually and there is a limited season for playing tennis because of the weather.

There are no questions for this witness.

Mr. Matyola notes that Mr. Puleo is available for questions if the Board has any for him.

The Board decides there are no questions for Mr. Puleo.

Mr. Matyola briefly sums up the application.

The Board Professionals have no further comments.

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Mr. Dietz says he thinks this is a good application and makes a motion to approve, as submitted.

Vice Chairman Haines asks if that includes removal of the concrete pad for the dog run which she believes was mentioned earlier.

It is suggested that instead of replanting trees on a heavily wooded lot, an in lieu of fee is made to the Tree Mitigation Fund to Hillsborough so new trees can be planted where they are needed in town.

Mr. Dietz suggests a \$1,000 donation to the tree fund.

The motion to approve with removal of the concrete pad and a donation to the tree mitigation fund, and seconded.

Mr. Anderson clarifies that D&R Canal Commission approval is a condition of this approval.

Roll Call: Mr. Lipani – yes, Mr. Valcheck – yes, Mr. Dietz – yes, Mr. Herbert – yes, Mr. Hesthag – yes, Vice Chairman Haines – yes, Chairman Fenwick – yes. Motion carries.

CORRESPONDENCE

None

ADJOURNMENT

The meeting adjourned at 10:04 p.m.

Submitted by:

Caitlin Davis

Planning and Zoning Clerk

Reviewed by:

Debora Padgett

Administrative Assistant

Planning Board/Board of Adjustment Clerk

Approved