

HILLSBOROUGH TOWNSHIP BOARD OF ADJUSTMENT
PUBLIC MEETING MINUTES

June 05, 2013

Chairman Fenwick called the Board of Adjustment meeting of June 05, 2013 to order at 7:30 p.m. All stood for the Pledge of Allegiance. The meeting took place in the courtroom of the Municipal Complex.

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

ROLL CALL

Michael Volpe – Present

John Stamler – Absent

Helen Haines, Vice Chairman – Present

Marian Fenwick, Chairman – Present

Walter Dietz, III – Absent

Frank Valcheck – Present

Shawn Lipani (#7) – Arrived 7:40 p.m.

Frank Herbert (Alt. #1) – Present

Curtis Suraci (Alt. #2) – Present

Kenneth Hesthag (Alt. #3) – Present

Michele (Horst) Boronkas (Alt. #4) – Absent

Also in attendance: Mark Anderson, Esq., Board Attorney, Woolson Sutphen Anderson, P.C.; William H. R. White, III, PE, Engineer, Maser Consulting; David Kois, Zoning Officer/Assistant Planner/Board of Adjustment Administrative Officer/Secretary; and Susan Baber, CCR.

EXECUTIVE SESSION

Chairman Fenwick announced the Board will convene into Executive Session to discuss attorney-client privilege matters.

A motion and a second were made. All were in favor, none were opposed. Motion carries.

Session was held 7:31 p.m. – 7:54 p.m.

A motion and a second were made to close Executive Session. All were in favor; none were opposed. Motion carries.

Chairman Fenwick noted Mr. Lipani arrived at 7:40 p.m.

ACCEPTANCE OF MINUTES

May 01, 2013

Mr. Volpe noted a typo in the heading.

A motion to approve as amended was made by Mr. Lipani, seconded by Vice Chairman Haines.

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

ACCEPTANCE OF RESOLUTIONS

Chabad of Greater Hillsborough, Inc. – BA-12-07

A motion to approve was made by Vice Chairman Haines, seconded by Mr. Valcheck.

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

Patrick DeNapoli, Jr. – BA-12-10

A motion to approve was made by Mr. Valcheck, seconded by Mr. Lipani.

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

Rohul Patel and Urja Shukla – BA-13-05

A motion to approve was made by Mr. Valcheck, seconded by Mr. Lipani.

Roll Call: Mr. Valcheck – yes; Mr. Volpe – yes; Mr. Herbert – yes; Mr. Suraci – yes; Vice Chairman Haines – yes; Chairman Fenwick – yes. Motion carries

MK Properties, LLC – BA-13-06

A motion to approve was made by Vice Chairman Haines, seconded by Mr. Herbert.

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

BOARD OF ADJUSTMENT MEETING MINUTES

June 05, 2013

BOARD OF ADJUSTMENT BUSINESS

None

BUSINESS FROM THE FLOOR

None

PUBLIC HEARING - APPLICATIONS

Luiz PEREIRA – File #BA-13-08 – Block 8, Lot 11 – 717 Amwell Drive. Applicant requesting Certificate of Nonconformity to recognize the existing use of the property as a legal prior existing nonconforming use as a two-family house on property in the AG District.

Mr. Kois announced the application has been adjourned to July 17, 2013 without further notice.

Stacy GRAB – File #BA-13-07 – Block 174.04, Lot 59 (formerly known as Block 174A, Lot 6) – 9 Starview Drive. Applicant seeking ‘c’ Bulk Variance for relief from Minimum Lot Size to permit construction of a single family dwelling on property in the R District.

Mr. Kois introduced the application for the record.

Stacy Grab was sworn in and gave the following testimony:

The property is 40,000 sf. which is .9 acres; the requirement is 1 acre so I am asking for a ‘c’ Bulk Variance.

Vice Chairman Haines said we need a reason to grant variances.

Mr. Volpe said we understand you are looking to build something in the future but it is unusual for the Board to grant a variance without having a plan.

Ms. Grab said there is no plan currently. At this time we are just asking that it can be a buildable lot. Whatever plans we come up with will conform to the stated setbacks, impervious coverage and current codes.

Mark Anderson, Esq. stated I have looked at this application at some length and discussed it with Mr. Kois. It is my opinion that the Board cannot grant a variance for the reason that has been suggested; there is no plan. The applicant is not looking for a variance; she is looking for an assurance that this is a buildable lot and that is not something that can be granted by variance. Even if the Board did grant a variance, there are time limits so by no means would that be a permanent indication that it can be built.

The applicant needs to provide a plan to address the so called “positive criteria” and give sufficient reasons for such. She will also need to address whether the plan has any negative aspects. You cannot determine that unless you have a plan so there simply is not enough in this application. It is my strong suggestion that Ms. Grab ask for this case to be adjourned. At this point the inevitable alternative would be that this case will be dismissed which is not in your best interest. I recommend you consult a land use attorney. This issue seems easy on the surface but is actually a very complicated matter.

Ms. Grab asked if consideration would be given to the fact that it is in a development with surrounding homes of similar lot size.

Mr. Anderson stated that would be entirely up to the Board. If you choose to adjourn the application and amend it to provide a plan, the Board would have something to consider. Again, even if the Board grants a variance, it is not for a perpetual amount of time.

Mr. Herbert said I would like to see how your plan fits in with the neighborhood.

Mr. Anderson said you would need to re-notice because people would have to be noticed that the plans are on file. You would also need to get your plans to the Planning Department in advance.

Vice Chairman Haines said once an application is approved, you have 1 year in which to secure all permits and within the second year, it has to be completed.

Mr. Herbert suggested that if you have a buyer, it is not uncommon for an applicant to come to the Board with the plans of the potential buyer, if you would like to go that route.

Mr. Kois stated the time of decision for the application is August 14, 2013.

Mr. Anderson explained that the Board has a limited time for most applications once the application is complete in which

BOARD OF ADJUSTMENT MEETING MINUTES

June 05, 2013

the Board has to act. You can extend the time of decision, and probably should, so that you have some options into September.

Chairman Fenwick informed the applicant to keep the Planning Office informed of the status of the application closer to the July 17th date.

Courtney and Meredith BARRY – File #BA-13-09 - Block 204.06, Lot 91 – 14 Francis Drive. Applicant seeking 'c' Bulk Variances for relief from Maximum Impervious Coverage; Minimum Setback for Accessory Structure; and such other variances, waivers and approvals as are necessary to permit the applicant to construct an in-ground swimming pool with 616 sf. of impervious decking and retain existing shed on property in the R District.

Mr. Kois introduced the application for the record.

Courtney and Meredith Barry were sworn in and gave the following testimony:

Mr. Barry stated our lot is allotted 15% impervious coverage. We are currently at 19.2% and are requesting 21.5% for our in-ground pool and are also requesting a setback variance for an existing shed that was on the property when we purchased the home.

Mrs. Barry said in response to Mr. White's memo, we are asking for 616 sf. of impervious surface which also includes 32 sf. for the pool filter. To limit the runoff we plan on putting landscaping around the entire perimeter of the pool. We do not have any places to add sidewalks from the pool to any sidewalks we currently have. Knowing that they would increase the impervious coverage, we decided to move forward without them. We would be putting up at least a 4 ft. fence as per code.

Vice Chairman Haines asked how close the shed is to the property line on the plan.

Mr. Barry said the shed is not on the plan. It is probably 2 ft. on the back end of the property, and approximately 2 ft. to the other side, at an angle.

Vice Chairman Haines asked why the shed cannot be moved.

Mr. Barry explained the shed was there when we purchased the property 10 years ago. It is very frail so I am sure if we did try to move it, it would fall apart.

Vice Chairman Haines suggested now would be a good time to replace it and put it in a proper place.

Mr. Barry agreed.

Vice Chairman Haines asked if the driveway is sufficient enough to house a new shed so as not to take up additional impervious surface.

Mr. Barry said there is not room enough to allow for it and be able to get my truck out of the second bay.

Chairman Fenwick asked what type of surface the pool filter will be sitting on.

Mr. Barry replied, on 2 sf. of concrete.

Mr. Herbert asked about the concrete under the decking. Is it possible to take that out?

Mr. Barry said we were not aware of impervious surface at the time our deck was built 7 years ago. The deck is over the cement patio. There is no way to take it out now.

Mr. Kois noted a Zoning permit was issued 06-12-06 for the deck.

Mr. Lipani asked Mr. Barry to address stormwater management.

Mr. Barry said there will be landscaping around the perimeter of the pool. The Plans were revised 3 times to make sure it is as far back from our property line, allowing 63 ft. for runoff. Behind our property is open land. About 15 ft. behind the shed is our neighbor.

Chairman Fenwick asked if there is any way to reduce the amount of concrete around the swimming pool.

Mr. Barry said that would be an option.

Mr. Lipani asked about the pavers at the end of the deck and the possibility of moving the location of the pool to

BOARD OF ADJUSTMENT MEETING MINUTES

June 05, 2013

incorporate that. What about the other walkway at the side of the deck?

Mr. Barry said the engineer did not break that out but the half moon is probably 50 ft. Those are the only stairs down the deck. We do not want to go from the deck into the pool. We want to have access for our children to be able to get into the back yard. Using the other walkway would force you to go all the way around the pool. We have sliding glass doors that lead to the deck and down the stairs to the yard.

Mr. Lipani asked if the pavers can be taken out.

Mr. Barry said that is an option we can do.

Mr. White said that half moon area is about 70 sf. more or less.

Mr. Barry said we sent out all of the appropriate notices. There were no responses for land.

Vice Chairman Haines suggested when this deck is eventually replaced, the 500 sf. of pavers underneath the deck could be removed. I do not know how that would be enforced though.

Mr. Anderson noted it could be put in the Resolution. Hillsborough Township maintains records. It would come out to a considerable improvement in the impervious coverage.

Mr. Kois mentioned that he added that calculation in his report as a comparison. Mr. Kois clarified the current shed definition has a maximum of 12 ft. in height. As you know, the setback requirement is 1 1/2 times the height away from the property line. Since this lot is 26,000 sf., which is over the 25,000 sf. maximum, there is a provision that does not apply to this lot which allows a shed to go as close as 5 ft. to the property line in the rear yard.

Mr. Barry stated the existing shed is approximately 8 to 10 ft. in height.

Mr. Kois asked whether the improvements to the driveway were made by the applicants.

Mr. Barry said all of the exterior improvements were made prior to ownership. We have only done interior improvements.

Mr. Kois said it is my professional opinion that this driveway is not original. Typically, a builder will not do a driveway of this configuration and of this size, especially the piece that goes beyond the last bay.

Mr. Barry said there is a side entrance to the house there which is used often and leads to the inside of the house. I often have to pull up onto the area labeled "concrete" in order to be able to do a few k-turns to get into my garage. It definitely is not as big as it looks on the plan. We could conform to putting whatever size shed the Board allows.

Open to the Public

Dale Gordon and Suzanne Ochse

Mr. and Mrs. Gordon were sworn in. Mr. Gordon said the applicants live directly behind me. Mr. Gordon read his letter into the record requesting that when the shed is upgraded it be moved elsewhere on-site to meet the township's requirement. He stated because our properties border significant wetlands, added runoff is problematic for us and downstream property owners. We request that if approval of 22% impervious coverage is granted, that the property owners only be allowed to use porous surfaces and construct a swale to slow down runoff.

Chairman Fenwick said I am aware there are significant wetlands back there.

Mr. Gordon said the stream is so bad that it is covered with grass now so the water comes onto our property in the back. It is going to erode considerably. It would be good if the township started taking care of its' streams.

Chairman Fenwick said I would like to see how we can reduce the amount of concrete around the swimming pool because there is quite a bit there.

Mr. Barry said we would be willing to tear down the shed which is approximately 160 sf. We are also willing to get rid of the 70 sf. half moon by the stairs that we built.

Mr. Kois said if the stairs are to remain, I believe the building code requires a minimum platform at the end of the stairs.

Vice Chairman Haines asked for clarification on the dimensions of the pool walkway.

Mr. Barry explained at the top of the pool we are requesting 6 ft. x 44 ft. so that we can have chairs there. The left, right and bottom of the pool would have 4 ft. x 28 ft. of concrete.

BOARD OF ADJUSTMENT MEETING MINUTES
June 05, 2013

Mr. Lipani asked if the bottom section could be reduced to 2 ft.

Mr. Barry said I believe there has to be a minimum of 3 ft. for service and for safety. We would be willing to reduce it to 3 ft.

Vice Chairman Haines asked if the sides could be reduced to 3 ft. as well.

Mr. Barry agreed.

Mr. Herbert suggested eliminating the back and also spoke again about removing the concrete from under the deck.

Mr. Barry said the deck is only 7 years old so I do not anticipate it being replaced any time soon. We are not willing to give up anything on the back of the pool.

Mr. Lipani acknowledged the applicant's willingness to work with the Board. As for the neighbor's concern about the swale, I do not know that a swale is the answer as much as landscaping and plants as an efficient means to absorb the water. A swale creates a way to get water off of the property quickly as opposed to a slow release of water.

A motion to approve was made by Mr. Lipani.

Vice Chairman Haines said the removal of the concrete patio under the deck when the deck is replaced should be a condition of approval.

Mr. White offered the reduced impervious surface percentage would be 20.3% (reduction of 3 sides of the pool walkway to 3 ft. and removal of the half moon and shed).

Mr. Gordon came back up to say that if they are looking to do landscaping, they may want to put some willow trees back there which will suck up a lot of water.

Mr. Lipani said there are also other options of deciduous trees and grasses.

Chairman Fenwick asked Mr. Barry if there is any landscaping across the back property line.

Mr. Barry answered, there is a lot of vegetation and full grown trees just beyond our property line.

Vice Chairman Haines said one of the conditions of the Resolution should be that there will be no additional runoff from the property.

Mr. White said based on the fact that you are considering granting 20.3% impervious coverage, there is a slight increase in impervious coverage and will be a slight corresponding increase in runoff based on that because you are changing the land characteristics. More that likely, it is de minimum. You will not be able to discern it in a typical rainstorm.

Mr. Lipani said my motion stands.

A second was made by Mr. Volpe.

Mr. Anderson asked Mr. Lipani if his motion includes conditions for porous concrete or a swale.

Mr. Lipani said no then asked Mr. White for his recommendations.

Mr. White said for this type of application of a pool, I do not think it is smooth enough for children's bare feet. It becomes an enforcement issue for whether it is being kept clean so that it remains porous. Porous materials are high maintenance so I would steer you away from that for a residential application.

Mr. Anderson said there were specific areas for removal but the only one I think should be in the Resolution is the removal of the shed. The rest of it comes down to meeting the percentage for the impervious coverage granted of 20.3%. It is up to the applicants as to how they want to meet the percentage. The eventual removal of the concrete under the deck will be a condition of approval. Either the Assistant Planner or the Engineer will need to determine what is appropriate landscaping.

Mr. Kois agreed to take on that responsibility.

Roll Call: Mr. Volpe – yes; Mr. Valcheck – yes; Mr. Lipani – yes; Mr. Herbert – yes; Mr. Suraci – yes; Mr. Hesthag – yes; Vice Chairman Haines – yes; Chairman Fenwick – yes. Motion carries.
Chairman Fenwick thanked the applicants for working with the Board in trying to reduce the impervious coverage.

BOARD OF ADJUSTMENT MEETING MINUTES
June 05, 2013

Chairman Fenwick announced the next meeting will be held on June 19, 2013.

CORRESPONDENCE

None

ADJOURNMENT

The meeting adjourned at 8:57 p.m.

Submitted by:
Debra Padgett
Planning Board/Board of Adjustment Clerk

Approved