

MINUTES

MARCH 6, 2012

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Dr. Behr, called the meeting to order at 8:00 P.M.

He then read the following statement:

Adequate notice of this meeting has been provided by posting a copy of the public meeting dates on the municipal bulletin board, by sending a copy to the Courier News and Echoes Sentinel and by filing a copy with the Municipal Clerk, all in January, 2012.

PLEDGE OF ALLEGIANCE

ROLL CALL

On a call of the roll the following were present:

E. Thomas Behr, Chairman
Sandi Raimer, Vice Chairman
Christopher Collins, Member
John Fagnoli, Member
Maureen Malloy, Member
Felix Ruiz, Member

Michael Pesce, 1st Alternate
Richard Keegan, 2nd Alternate

Barry Hoffman, Bd. Attorney
Thomas Lemanowicz, Bd. Engineer
Kevin O'Brien, Twp. Planner
Dawn Wolfe, Planning & Zoning Administrator

Excused: Edwin F. Gerecht, Jr., Member

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EXECUTIVE SESSION

It was determined that there was no need to hold an executive session.

APPROVAL OF MINUTES

The minutes of January 17, 2012 were approved as amended on motion by Mr. Pesce and seconded by Mr. Fagnoli. Dr. Behr and Mr. Ruiz abstained as they were not present at that meeting.

ANNOUNCEMENT

Dr. Behr announced that the application of Parthenon Realty, LLC (No. 11-08Z) is carried to April 3, 2012 with no further notice.

ANNOUNCEMENT

Dr. Behr said that it is essential for the Board members and its professionals to have all the information they need in order to give every applicant an absolutely fair and unbiased hearing. He said that there have been recent instances when applicants simply have not provided requested material which has resulted in unfortunate postponements which clutter the Board calendar and is troubling for the applicant because it can cause them to have to attend a second meeting and incur unnecessary additional expenses costs had their application been properly presented. In consultation with Vice Chairman Raimer and Mrs. Wolfe, he said it has been

decided that the Board will extend the time granted for continued hearings to a minimum of 3 weeks. He acknowledged that expecting an applicant to get everything done within a 2 week window is probably unreasonable. In the future, he said that we will also be giving every single applicant (commercial or residential) a very simple fact sheet outlining the things that they have to do in order to insure a productive hearing.

Mr. Pesce asked if the Board needs to memorialize those practices in any way.

Mr. O'Brien said that the Board already has a set of by-laws that governs its action. He said that it might be reasonable for the Board to amend those by-laws if it wishes to include particular practices as part of its normal procedure.

In response to Dr. Behr, Mrs. Wolfe said that if such by-laws are in the Ordinance, she has not seen them.

Mr. O'Brien replied that they are *not* in the Ordinance. He was under the impression, some years in the past, the Board had adopted the Cox model by-laws.

Dr. Behr said that there had been a steady line of Board members who have simply come up through the system and so much of what we do has been passed on simply as a matter of habit and practice. He agreed to attempt to locate them and get back to Mr. Pesce.

Mr. Hoffman said that, preferably, any provisions pertaining to practices of the Board establishing time limits and procedures for submittal of new and revised documents should be based upon provisions *in the Ordinance* - at least there is some indication along that line and some references in Mr. Cox's treatise. Secondarily, he agreed with Mr. O'Brien that, at a minimum, it should probably be covered in the by-laws. To his knowledge, until only a few days ago, no one has questioned the practices of the Board.

Mr. Pesce said that that was what prompted him to ask.

Dr. Behr agreed to get back to the Board on the matter. He said that it really has been just kind of a word of mouth and that Patrick Jones gave him a folder when he left.

Mrs. Raimer added that it has been our long standing practice for many, many years.

Dr. Behr said that the notion is that we have receive all information in order for the Board members to do their jobs responsibly and for its consultants to advise us. He said that the bottom line is to the applicants and it struck him as terribly wrong that an applicant would need to pay for additional meetings when they *could* be done in one meeting.

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ANNOUNCEMENT

Dr. Behr noted that some of the Board members have laptops and more may have them in the future in the interest of saving paper. However, he requested the Board to be mindful that it is considered bad practice when somebody is speaking to be looking at a laptop.

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MARTIN SKRIVANICH

103 Lackawanna Blvd.
Block 11106, Lot 2

#11-06Z

Bulk Variances

Present: Martin Skrivanich, applicant
Erica Busch, licensed professional engineer

Lucille Grozinski, certified shorthand reporter

This is a continued hearing.

Mr. Martin Skrivanich, applicant, was previously sworn. He said that his engineer, Ms. Erica Busch, was present this evening to address issues raised by Mr. Lemanowicz since the last meeting.

Ms. Erica Busch was also previously sworn. She said that she intended to address the technical comments contained in Mr. Lemanowicz's report dated 2/27/12. The first item was the proposed improvements to increase the lot coverage from 15.5% to 19.6%. She said that the lot coverage was originally proposed at 20% and, subsequently the size of the driveway was reduced.

She said that stormwater runoff will be controlled by the proposed drywell which meets the capacity pursuant to the Ordinance. At the request of Mr. Lemanowicz, she said that she dug a soil log which showed a perched water table. She said that it was pretty obvious and she did not need to dig a soil log to see that because the water just ponds on the ground out there. Down to about 9' she found silty clay and clay loams. Below that she found highly fractured shale with seepage in it. She said that the clay soils will in no way keep the drywell from working properly due to the fact that the bottom of the drywell is into the fractured shale by about 6".

In response to Mr. Hoffman, Ms. Bush said that a perched water table is when the soils are not very permeable and it doesn't allow the water that falls from the sky or that runs onto the lot to percolate into the soil

Ms. Busch agreed to revise the detail of the drywell to conform with the Sec. 146.8g which concerns the sand layer at the bottom of the drywell. In addition to the soil log she performed, she also performed a pit bale test (which is basically done by timing how fast the water comes into the test pit). She said there is a permeability rate of greater than 20" an hour, which is pretty much at the top of the scale. She felt confident that the drywell will drain within 72 hours. She designed the drywell to be greater than 2' above the seasonal high ground water. She noted that the drywell has basically been placed within an easement, but added that it can be changed at the Board's request. She believed that it is a critical area, but said if it is not, it can be changed to remove the easement around the drywell. She said that she and Mr. Lemanowicz looked at the site and came to an agreement. They thought about how things could be graded differently and agreed to reduce the berm on the north side so that it is not so steep.

In response to Dr. Behr, she said that it will just smooth things out and the berm won't be as high and as steep on the one side.

Mrs. Raimer asked Ms. Busch to be more specific and requested the proposed height of the berm.

Ms. Busch replied that, on the current plan it is 2' higher than existing grade if you look at the 100 contour line. She will move the 100 contour line closer to the house so that the berm isn't from 100 down to 98, so rather than 2', it will only be 1'. She said that they went over all of the grading on the lot on the south side and all of the water will sheet flow and about 1/3 of the lot will be directed out into the street. The water that now runs onto the neighbor's lot to the north won't go there anymore and will, instead, be directed to the drywell.

Dr. Behr asked what will ensure that the water from the neighbor's lot will run into the drywell.

Ms. Busch replied that the lot will be graded so that the water is directed towards the back of the lot and the drywell. She said that swales and the berm on the north side of the property line will be used.

Referring to Mr. Lemanowicz's Technical Comment #3, Ms. Busch said that Mr. Skrivanich has a letter from his architect indicating that there was a typo on the grade elevation.

Referring to Technical Comment #4, she said that they *do* have Morris County Soil Conservation District approval and that she had a letter to that effect.

In response to Mr. Hoffman, Mrs. Wolfe said that she did not have a copy of such a letter.

Ms. Busch provided a copy to Mr. Lemanowicz and Mrs. Wolfe.

For the record, Mr. Lemanowicz explained that it was a *conditional* certification and is limited to the controls identified on the plan. It states that it “is not authorization to engage in the proposed land use unless such use has been approved by the municipality or the controlling agency”. He confirmed that it is conditional upon Board approval and that the matters within the purview of the Morris County Soil Conservation District have been approved.

Ms. Busch stated that she was finished with her testimony.

Mr. Lemanowicz said that after seeing the plan revision come back which did not include some of the changes he was looking for, he contacted Mr. Skrivanich who was kind enough to allow him to speak with his engineer on site so that she would understand his concerns. He found the site to be flat with some low areas and there was actually still ponding on the neighbor’s property from the last rain which was some time ago, noting that it was not that recent or that large for the water to still be sitting there after a couple of days. He said that he looked to be sure that where the water was directed would not increase issues because most times you don’t solve drainage problems, you just move them, and he wanted to be sure that that was not the case here. He said that the property has an asphalt berm which is basically protecting it from the road or else the road would drain onto it, obviously making matters worse. Therefore, it seemed to him that there was an acknowledged issue there. He said that the applicant is looking to resolve some of the grading issues and he understood that the changes that Ms. Busch was talking about were going to take the swales that are basically narrow channels and make it a wider area so that, rather than have a 2’ wide, 4” deep swale, maybe it would be 12’ wide, 1” deep. He said that it is not apparent as a drainage structure, it just looks like a lawn. With regard to the seepage pit to the rear that was discussed, he said that he looked at the soil log that was submitted. He noted that he was given a new soil log that was revised 3/5/12 which adds some of the infiltration or the permeability information showing that the drywell will drain. He said that some of the surface water issues will be eliminated and it will reduce the water going to the northerly neighbor by basically sending it to the rear of the property rather than sheeting onto his property. He said that the ponding on the neighbor’s property was up near the roadway and that the rear of that neighboring property is better graded and will be able to handle it. He said that his goal and discussion with the applicant was basically to retain as much of the rolling topography rather than try to do the swales that were relatively abrupt. While on site, he said that he questioned how the grading was going to affect the property to the south and Ms. Busch showed how, with the grading, the runoff was going to be deflected onto the road and that there wasn’t going to be a problem because the property to the south is actually higher and then the land comes down to the subject property and then stays flat. He felt that there was enough topography to deal with it. He said that the plan doesn’t show topography that far off the subject lot, which is not unusual for a plan of this type, which is why he wanted to visit the site to make sure he understood what was happening. He felt that the property could be graded to meet what he and the applicant are looking for. Based upon Ms. Busch’s testimony, he said that it seemed that the drywell will serve the purpose.

Mrs. Raimer asked Mr. Lemanowicz if, in his professional opinion, he was perfectly satisfied that the new grading would assure that any water on the property won’t transfer to any neighboring properties.

Mr. Lemanowicz replied that, based upon the grading that Ms. Busch is proposing as the applicant’s engineer, he did not have any objections to what she is doing with respect to impacts on the neighboring properties.

Addressing Mr. Lemanowicz, Mr. Hoffman said that one of the items cited in the Administrative Review for this application was that pursuant to Sec. 146.2 of the Ordinance, all developments which include stormwater management facilities must be designed so as to further the Township’s objectives of having no net increase in stormwater. He said that it was cited with a comment that there was not adequate information to make that assessment as to whether there

would be no net increase in stormwater such that might impact other properties. In light of the plans revised most recently (or at least the supplemental soil log), he asked Mr. Lemanowicz if he had a comment as to whether that objective in the Ordinance would now be considered to have been met.

Mr. Lemanowicz replied that, when we deal with developments of this size, typically we go into 4" of water in the drywell and that is what the applicant has done in this case. He was satisfied that this has followed the pattern that the Board has been using with respect to additions and such.

Dr. Behr asked Mr. Lemanowicz if all of the issues he had raised had been responded to.

Mr. Lemanowicz replied affirmatively, based upon the commitment by the applicant and his engineer to do the proposed regrading. He said that it is well within the ability of the applicant's engineer to satisfy his grading comments.

Addressing Mr. Hoffman, Dr. Behr said that, if the application is approved, this would become a condition of approval.

Mr. Hoffman said that he would touch base with Mr. Lemanowicz, who said that he would offer some wording to him.

Dr. Behr asked Mr. O'Brien if there were any issues he had raised that he felt that the applicant has *not* responded to, particularly in his latest report.

Referring to his report dated 2/28/12, Mr. O'Brien replied that his Item I "Backyard Debris" had not been discussed at the last meeting. He also referred to the bottom of Pg. 6 regarding concerns about the basement which he said should be discussed. He considered both of those items to be open.

Mr. Skrivanich said that the backyard debris Mr. O'Brien had referred to is actually on the property behind his and has nothing to do with the lot which he owns, noting that there are markers at each of the corners of his property. With regard to Mr. O'Brien's basement concerns, he said that the existing mechanicals will remain where they are in the existing basement. He said that he will speak to his architect regarding the location of a new water heater.

In response to Mr. O'Brien, Mr. Skrivanich assumed that he will have new mechanicals for the new addition. He agreed that the existing mechanicals for the one floor home will stay where they are and continue to serve that part of the house. He said that the mechanicals for the new addition will be located in the new basement and that he did not have any other plans for the new basement.

The meeting was opened to the public for questions. There being none, the meeting was closed to the public.

Dr. Behr referred to the bottom of Pg. 3 of Mr. O'Brien's latest report and asked Mr. Skrivanich if he was going to plant 2 red maple trees along Lackawanna Blvd. and if he was going to plant any other trees or landscaping associated with the proposal.

Mr. Skrivanich replied that he had not decided yet. He said that he might plant more trees in the backyard, but as of now he did not plan on doing anything.

Mrs. Raimer said that at the last meeting the number of trees Mr. Skrivanich had installed on the property since he owned it was discussed. She said that they may not be reflected on the plans and did not know if that would offset Dr. Behr's concern. She asked him to explain how many there are, their location, type, etc.

Mr. Skrivanich said that within the last 2 years he planted about 30 green giants on both sides (15 on the north and 15 on the south side) of his property to serve as a hedge. He agreed to plant the 2 red maple trees along the front, as requested.

Referring to Mr. O'Brien's report, Dr. Behr said that the Board must make a ruling based upon the issues he raised on Pg. 7. He asked Mr. Skrivanich to summarize his case for why he believed it is appropriate for the Board to grant the requested variances.

Mr. Skrivanich said that the subject property has practical difficulties which do not allow it to be developed in accordance with the Zoning Ordinance. He said that every adjoining lot is nonconforming in area and, therefore, no property is available for purchase from his neighbors that would make his own property comply with the minimum lot area requirement. He said that the house could be demolished and a new dwelling constructed with a conforming front yard setback but that is not practical and would be a big hardship for him and his wife. He said that the neighborhood has a mixture of older homes that have had additions added onto them and there is also a new home on the block, so the neighborhood is in transition and being updated into a more modern lifestyle and use. He felt that his application is in harmony with the neighborhood and he hoped that the Board would look favorably upon his proposal for a conditional approval.

The Board began its deliberations.

Mr. Fargnoli said that he was leaning in favor of the application noting that the lot is nonconforming and could be considered to be a hardship as a c variance and a flexible c variance, creating no detriments and only positives. Based upon the conditions which Mr. Lemanowicz mentioned concerning drainage, he said that he would vote in favor of the application.

Mr. Ruiz concurred. Although not eligible to vote on the application, he said that if he *was* eligible, he would vote in favor because of hardship.

Mrs. Malloy agreed. She felt that the applicant has satisfied the Board's questions regarding drainage and stormwater and where the mechanicals will be placed, as well as questions such as lighting. She felt that the proposal will serve to benefit the neighborhood as well as the applicant.

Mrs. Raimer felt that the applicant has met his burden of establishing a hardship based upon the nonconforming front yard setback. She saw no negative impact upon the surrounding properties, in fact, she felt that the proposal will have a positive impact upon the surrounding properties based upon the new grading and testimony presented this evening. She said that it is possible that Mr. Skrivanich will be able to transfer some of the water that might have been ponding or spreading from his property by collecting it appropriately in his drywells and directing it in a way that will not have a detrimental effect on the neighboring properties. In addition, she saw no negative impact to the MLUL or the Township Ordinances. For those reasons, she said that she would approve the application.

Mr. Collins said that he lived in the applicant's neighborhood at one time and knew the neighborhood quite well. He said that his concerns have been addressed and that he would vote in favor of the application.

Mr. Pesce also supported the application. He complimented the applicant on his good faith effort to respond to the suggestions of the Board members and consultants.

Mr. Keegan was also in favor of the application. He felt that the property, as is, is suffering from functional obsolescence noting that it contains a very small house on what he perceived to be a large lot. He felt that the proposal will fit in with the neighborhood and that the applicant has met his burden.

Dr. Behr concurred. He felt that the applicant has demonstrated that a hardship exists and that what he is proposing does, in fact, meet the test for a flexible c variance. He said that it advances

the purposes of the MLUL and he felt that the benefits from it that have been outlined by other Board members far outweigh any detriment.

Mrs. Malloy made a motion to approve the application subject to the conditions that Mr. Hoffman will enumerate. Mr. Keegan seconded the motion.

Mr. O'Brien stated the following conditions of approval based upon his notes:

- Street trees
- House finish
- Lighting
- The new plans that have been submitted will govern.

After discussion, it was agreed by the Board that 2 new street trees would be satisfactory.

Mr. Lemanowicz said that the final grading of the property should be reviewed.

Mr. Hoffman noted that there was something in Mr. Lemanowicz's latest report indicating that the applicant's engineer should prepare a statement describing how the design of the drywell will overcome the restrictions inherent in this type of soil. He asked him if what he heard in testimony as well as his review of the revised plan was adequate information in response to that comment and has been shown, or if he felt that something further is needed to meet that item.

Mr. Lemanowicz said that there is a revised report from Ms. Busch dated 3/5/12 which discusses the hydraulic testing and he felt that that is pretty close to what we need. He said that, when we deal with the fine grading and such, he may want to add a few extra words, although he felt that this is substantially what he was looking for. He advised Mr. Hoffman to leave it in there.

Mr. Hoffman noted that Mr. Lemanowicz had raised the point that there is going to be a revised construction detail for the proposed drywell which will be a condition. Thirdly, he said that there was something in Mr. Lemanowicz's report(s) to the effect that soils data is to be provided so that the drywell will drain within 72 hours of being filled and that the seasonal high groundwater elevation will be greater than 2' below the stone layer under the drywell. He asked Mr. Lemanowicz if he had gotten all of that information or if that should be left open.

Mr. Lemanowicz replied that that information was submitted with the 3/5/12 revision with the soil information, therefore he felt it has been satisfactorily addressed.

Mr. Hoffman said he would add words to the effect that the applicant must regrade the property to provide for more gentle slopes, all of which will be done in a manner acceptable to Mr. Lemanowicz.

Mr. Lemanowicz said that would be fine.

Mr. Hoffman said that another condition would be to provide a maintenance plan and schedule for the stormwater management facility, same to be acceptable to Mr. Lemanowicz.

Mr. Lemanowicz replied that, for individual drywells for residences, we generally don't do that.

In that case, Mr. Hoffman said he would not include the same. However, he noted that it is clearly the property owners responsibility to maintain the drainage facilities on his lot.

Mr. Lemanowicz agreed.

Mr. Hoffman also noted that the engineering and architectural plans are to be reconciled with respect to the grade elevation off the right rear corner of the proposed garage.

Mr. Lemanowicz replied that he believed that that was taken care of by the letter which the applicant's engineer spoke of concerning the fact that the architect admitted that there was a typo on his plan, although he had not seen the letter yet.

Ms. Busch provided a copy of the letter to Mr. Lemanowicz.

Mr. Lemanowicz confirmed that a letter was received from Mr. Douglas Asral, AIA, indicates that his plan showed a grade elevation at the right rear corner of the proposed garage that did not match the elevation proposed by the engineer. He further noted that the elevation at this location should be 102.5, in accordance with the engineer's plan.

Mr. Hoffman said that, other than the standard administrative conditions such as proof of current tax payment and adequacy of escrow development funds, subject to the comments he had clarified with the aid of his colleagues, he felt that they could be appended as conditions to the draft Resolution.

Dr. Behr said that the motion still stands to approve the application subject to the conditions set forth by Mr. Hoffman in his Resolution.

A roll call vote was taken. Those in favor: Mrs. Raimer, Mr. Collins, Mr. Fagnoli, Mrs. Malloy, Mr. Pesce, Mr. Keegan and Dr. Behr. Those opposed: None.

Dr. Behr explained that the Board Attorney will prepare a draft Resolution of approval which will be reviewed by the Board members eligible to vote on the memorialization which will take place at the next meeting following receipt of the draft Resolution. After it is memorialized and certified, he said that a copy will be sent to Mr. Skrivanich. He requested Mr. Skrivanich to read the Resolution carefully and satisfy all of the conditions of approval by providing the requested information documentation directly to Mrs. Wolfe. Once all conditions have been satisfied, he said that the plans will be approved and signed by the Board Officers, of which Mr. Skrivanich will be provided with a signed copy. After receiving a signed copy, he advised Mr. Skrivanich that he may apply to the Construction Office for the necessary permits.

In response to Dr. Behr, Mr. Hoffman said that he will provide Mrs. Wolfe with a copy of the draft Resolution after it is prepared and she, in turn, will provide a copy of the draft to the applicant.

Dr. Behr congratulated Mr. Skrivanich and wished him luck with his proposal.

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ANNOUNCEMENT

Due to a lack of applications ready to be scheduled, Dr. Behr announced that the March 20, 2012 Board of Adjustment meeting is cancelled.

There being no further business, the meeting adjourned at 8:45 P.M.

DAWN V. WOLFE
Planning & Zoning Administrator

