

Germantown ZBA Minutes

Thursday

March 16, 2017

Members in attendance: Chairman Ed Colwell, Steve Bathrick, Joe Guida and Randy Phelan. Town Attorney Tal Rappleyea also in attendance.

Meeting is opened at 7:10 p.m. Attorney Rappleyea opened the meeting stating that matters before the ZBA are two public hearings first for the D'Souza's Area Variance and second for the Bernstein/Thompson and others appeal of the Zoning Law. It is further explained that normally a meeting is chaired by Mr. Colwell and that due to the complexity of the matters before the board it is unanimously decided for Attorney Rappleyea to chair the meeting, he will not participate in any other way or cast any votes. Attorney Rappleyea instructed the audience on the proceedings for the meeting, to sign in for which public hearing they would like to speak, a two minute duration and that a quiet forum be maintained as the meeting is taped and a stenographer is present, adding that the stenographer is supplemental, Town recording and secretary minutes are for the record.

Minutes are reviewed and on a motion by Joe seconded by Steve are accepted as written, with all in favor and none opposed.

Attorney Rappleyea introduced the D'Souza's as first public hearing. If time allows after all signed in parties are heard we will allow for additional comments, it is explained that all who comment are to limit the conversation to the agenda of the Area Variance which pertains to the height of the fence, and how it will have any detrimental effects to the five determining factors for the Boards consideration for granting a variance, which are then read and explained from the ZBA Law.

Motion is made by Ed to open the Public Hearing, seconded by Joe with all in favor and none opposed.

Ms. D'Souza is asked to briefly explain the nature for her application of an Area Variance. She restated that she presented to the previous Building Inspector for a Building Permit for a fence on her property and she was granted one with no stipulation on height. She stated the fence does not hurt her neighbors, and she has permission for her fence from neighbor to be on their property. She would like the height of the fence to keep deer out of her garden center and that the height is not her fault because she had the approval of the building inspector.

Ms. Polidoro gave legal argument as attorney for Arthur Cady neighbor against the application stating that none of the standards under review have been proven by the applicant. Previously it was stated that the posts were at 8 ft. height and the fence at 6 ft., suggesting to cut the posts to the fence height.

Steve Savoris, Former ZBA Chair, gave testimony of procedural history read from resolution of August 2016.

Arthur Cady and Elizabeth Cawley gave testimony and photos, they are neighbors adjacent to the property. They stated there is no justification for fence height or location by applicant, and they notice decrease in wildlife in area.

Testimony is received from Martin Overington giving general town History and he stated from mistakes made in past that he wants to speak and be heard. He then questioned if sign for public hearing was erected and where. Secretary DelPozzo responded to the date and location of the sign. Mr. Overington stated he has pictures and will produce for board. Attorney Rappleyea stated if there is no date we will repost and return for this meeting.

Robert The gave testimony supporting Ms. D'Souza, suggesting neighbors should talk this out.

Lee Wurtzberger gave testimony against Ms. D'Souza, suggesting smaller planting areas not fence on entire perimeter.

Testimony is given by Conrad Hansen stating he and several surrounding landowners had received a very malicious and misleading letter from Mr. Cady regarding the public hearing.

Josh Orient, adjacent neighbor, stated the applicants are nice people but that the posts of the fence are painted too bright, and are monolithic, detracting their view. Mr. Orient state he did not receive mailed notice of this meeting, attorney Rappleyea clarified that his purchase of property is recent and therefore he is not listed in tax roll where addresses are obtained.

It is stated that written comment will be accepted for 7 days, attorney Rappleyea will have discussion with each board member and at next meeting have a proposed resolution. Motion is made by Steve to close Public Hearing, seconded by Joe with all in favor and none opposed.

Attorney Rappleyea introduced Ms. Bernstein and Mr. Thompson appeal for interpretation of the Zoning Law as it pertains to the Scenic Viewshed Overlay (SVO), which is joined by Mr. Cady of Main Street, whose home is approx. 2 miles from the subject matter, which he stated is a distance of ½ mile, also joining this appeal Ms. Sarah Kilborne of Northern Boulevard whose home is next to the subject matter. Mr. Cady's standing in this appeal is to be reviewed after case study of Ms. Polidoro is submitted and reviewed by attorney Rappleyea. Direction is given to both Attorney's that each will receive 5 minutes for discussion as well as their consultants and thereafter 2 minutes to the public for comment. Discussion will begin, although Code Enforcement Officer is not present to start but will be introduced for comment upon his arrival.

Ms. Polidoro for the Appellants, introduced their appeal stating they oppose the decision of the Code Enforcement Officer (CEO), as they feel he failed to properly evaluate the impact the residence would have on the viewshed. Attorney Polidoro stated that it is the board's responsibility to determine if all standards have been met, and if the permit met all requirements, and that the subject matter should have been referred to the Planning Board for site plan review. Nan Stoltzenburg is introduced as the consultant by Ms. Polidoro, who she stated reviewed all the documents for review of the Building Permit application and will present to the Board.

A motion is made by Joe to open the Public Hearing, seconded by Randy with all in favor and none opposed.

Nan Stolzenburg of Community Planning and Environmental Associates on behalf of applicants submitted written report and oral testimony to the Federal Wetlands on property, archeological sensitivities, steep slopes, which are exclusions for a building permit, with final comment that the project does not conform with SVO standards.

Judy Bernstein, applicant submitted written letter Dated March 16, 2017 which she read to the board and is submitted for the record as her oral testimony.

Sarah Kilborne, applicant submitted photos for review from the board and are entered for the record. She proceeded to thank the board for their time, stating she does not know the subject home owners and welcomes them to the neighborhood and stated this is not personal but for clarification and review of the issuance of building permit and guidelines. Written statement is also submitted by Ms. Kilborne for the record.

Steven Thompson applicant, submitted a written statement dated March 16, 2017 with photos and statement from Mr. Shung. Mr. Thompson gave oral testimony by reading of his submitted letter.

Mr. Cady would like to seed his time, and request is denied. He is asked to speak or not. Mr. Cady submitted a written statement with explanation of historical data, maps and photos and the aspect to preserve the area, and its landscape and surrounding area.

It is asked by Attorney Cantor if Mr. Trapp the Code Enforcement Officer is present. It is confirmed by Attorney Rappleyea, that he is and Mr. Trapp addressed the board next on request of Attorney Cantor.

Mr. Trapp reviewed his process of the Building Permit Application, communication between himself, Mr. Bohl, Ms. Bernstein and Mr. Thompson. All correspondence is submitted in record, Mr. Trapp will submit a written comment for the record at a later date for Board review.

Mr. Cantor for the Home Owners Matthew Corpuel and Helen Pfister of the subject matter stated that the property has no retaining walls, has been erected on flatland not slopes, and the stated viewshed comments from the park landing are irrelevant. He stated he will have consultants comment and submit their memorandums. Attorney Cantor also stated he has an affidavit of the homeowners and they will address the board as well. First legal point he would like to make is the appeal was filed to late, passed the 45 day limit, appellants knew of the SVO and had many opportunities. Mr. Cantor submitted his written memorandum for the boards review.

Mr. Bohl, Architect for the subject matter gave his oral testimony and opinion on how he feels the SVO standards were reviewed and then met. He submitted to the board written memorandum.

Mr. Chris Rounds of Chazen Company stated his opinion to how the SVO was reviewed and standards were met. A written memorandum form he and certified planner Stuart Mesinger with a sworn affidavit were submitted for the boards review.

Mr. Matthew Corpuel, homeowner of subject matter, stated he is not an architect but knew that codes exist and took this into consideration and had home designed like others in the area. He feels that they are in compliance with the SVO and will submit written testimony for the board review. He concluded by stating that although they appellants tell him and his wife this is not personal, they are taking it very personal.

Mr. Cantor asked for the record to show his submissions of (7) copies to include: affidavit of Chip Bohl, Change report 3/13/17, supplemental memorandum 3/15/17 with photos and balloon test, memorandum of Mr. Cantor, memorandum of Matt Corpuel and Helen Pfister and these copies he will also give to Attorney Polidoro.

Diane Young, Steve Savoris, and Martin Overington gave testimony favoring the appeal.

Conrad Hansen, Patricia Hinkein, Henrietta D'Souza and Richard Hinkein gave testimony against the appeal.

Mr. Thompson, appellant gave further testimony that his purpose is NOT about the view, but to ask for better site plan reviews for determinations in the SVO for all. He wants the "process bettered"

Mr. Cady, appellant asked how long public comment is open. Answered by Attorney Rappleyea that the board will accept written testimony for additional 7 days. Attorney Cantor requests 10 days, which is denied and 8 days is agreed upon.

Motion to close Pubic Hearing is made by Joe, seconded by Steve with all in favor and none opposed.

This meeting is adjourned on a motion by Ed seconded by Joe with all in favor and none opposed.

Jami L. DelPozzo- Secretary Planning and Zoning