

Chairman Schwemmer called the regular Meeting of the Board of Adjustment of November 4, 2009 to order at 7:30 p.m.

MEMBERS PRESENT: Elliott Averett, Craig Schwemmer, Anthony Spina
Alternate Members: Frank Baguiao, Dorothy Walter
Members Absent: Felix Graziano, Harvey Ort, Morris Bauer, John Turick
Others Present: Attorney Fraser, Engineer Hall, Planner Banisch, Clerk Kesper

STATEMENT OF COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT

- Adequate notice of this meeting was sent to the Observer-Tribune and the Morristown Daily Record on January 14, 2009 and posted on the Bulletin Board on the same date. Notices were mailed as there were requests.

Pledge of Allegiance

MINUTES

1. October 7, 2009 Regular Meeting

Tabled to the December 2, 2009 meeting.

RESOLUTIONS

09-19 Black Oak Golf Club, LLC – Block 18 – Lot 22 – 105 Bartley Road – R-5 Zone – 2.077 Acres – Approval of Request for Use Variance for two principal non-conforming uses on one lot and preliminary and final site plan with variances for pre-existing conditions for lot size, street frontage, rear yard setback and improved lot coverage variances

The resolution was reviewed.

Ms. Fraser reviewed changes made after discussion with the staff and attorney for the applicant.

Mr. Averett made a motion to approve resolution 09-19 as amended tonight, seconded by Mr. Spina. A voice vote was taken:

Ayes: Averett, Schwemmer, Spina, Baguiao, Walter

Nays: Abstentions:
In-eligible: Graziano, Ort

Absent: Turick, Bauer

The meeting was opened to the public for items not on the agenda. There were no comments from the public and the meeting was closed to the public for items not on the agenda.

APPLICATIONS

1. Toll Brothers – Block 18, Lot 10.01 – 224 Coleman Road – R-5 Zone – Request for Use Variance to construct a directional real estate sign for the Estates at Long Valley

Larry Cohen, Applicant's Attorney
John Peck, Applicant

Mr. Cohen explained the application was for for a directional sign on property not owned by the applicant at the corner of East Mill Road and Coleman.

John Peck was sworn in by Attorney Fraser and stated that he is a Vice President of Toll Brothers.

Mr. Peck stated that Toll Brothers is building a development called the Estates of Long Valley and that 14 of the 49 units remain to be sold. He referred to an exhibit that was marked A-1, a location map of the Estates of Long Valley. He stated that the development is approximately 4/10 of a mile from the site where they want to place their sign. He stated that except for the car repair facility on which the sign will be located it is a residential area. He pointed to and explained the location of the proposed sign. He stated that they have put out temporary signs in the past and since they have stopped putting out the sign in August, they have had a 50% drop off of people stopping into the sales office. He answered the board that Toll Brothers had stopped using the sign at the direction of the Zoning Officer, Ms. Kesper.

Mr. Peck stated that this past year the sales have been the worst since they started the development. They have six homes under construction that were sold in the spring, since then they have had only one sale.

They currently have two developments in the Township, but only this one is under active sale. He answered the Board that they do have signs at the entrance to the community on Coleman Road and also on Bartley Road but that East Mill Road is a much more visible road. He stated that the roads are not accepted public streets and may not be able to be obtained by a GPS. Photographs were marked A-2 and passed out to the board. He answered Mr. Banisch that a weekly log is kept of people who stop in the sales office. He stated that the market has not dropped as much as the 50% sales office visits. The homes are $\frac{3}{4}$ million dollars and up. He answered the board that the house is built after the lot is sold. He answered Mr. Banisch that signs and drive by are categories for the people to indicate on the forms they fill out on how they found out about the community.

The meeting was opened to the public for questions of Mr. Peck.

Shelly Heretyk – Douglas Drive – Asked how long the sign would be up.

Mr. Peck stated that the sign will only stay up until all the lots in the Estates of Long Valley are built and will not stay up to advertise other communities.

Mr. Cohen stated that the applicant would agree to a time limit of three years or after the last certificate of occupancy.

Christina Denail – Coleman Road asked about the size and location of the sign.

David Plante was sworn in by Attorney Fraser and presented his qualifications as an engineer and planner.

Mr. Schwemmer accepted Mr. Plante as an expert witness.

Mr. Plante referred to an exhibit showing the proposed sign and the location which was marked A-4. He explained that the sign would be mounted on 4 x 6' posts and would be a wood sign and not lighted. The color would be red, as the one submitted with the application and 2.5' high and 4.5' wide for a total of 11.25 square feet and it is proposed to be 24" above the ground. He pointed out on the location map where it is proposed to be located, setback 3' from the property line on East Mill and 4' from Coleman, which is outside the sight triangle of East Mill Road.

Mr. Hall expressed his concerns regarding the blocking the line of sight.

Mr. Plante stated that they would set the sign further back for sight distance, ten feet off of each street.

Mr. Cohen answered the Board that the contract with the land owner allows them to put it anywhere within the grassed triangle shown on A-2.

Mr. Hall asked that the area it is to be placed be marked out for his approval prior to it being installed.

Ms. Fraser stated that the setback will be a variance as well as the use.

Mr. Cohen agreed and stated that the applicant agreed to put the sign in a location acceptable to Mr. Hall.

Mr. Plante stated that from the curb line it is proposed to be 15' back from East Mill Road and 17' from Coleman Road.

Mr. Hall was sworn in by Attorney Fraser.

Mr. Hall explained how the site distance would be measured. The stop line is 8' to 10' from East Mill Road and he will measure 8' back from there and a clear line of site must be obtained.

Mr. Plante stated that they want to place the sign perpendicular to East Mill Road.

Mr. Spina asked if there was a legal issue with the Township helping to place the sign.

Ms. Fraser stated that Mr. Hall would be approving the location as he does on any other application. As to someone suing the Township if an accident were to occur that was not really answerable.

Mr. Plante addressed the special reasons for granting the variance. He stated that this goes along with the Planning Board's approval of the development. He referred to exhibit 1 and the area where the development was and lack of visibility for the sign and stated that this property was uniquely suited to the proposed intersection. He answered Mr. Averett that the other side of Coleman Road would lack the visibility that the applicant was seeking. He explained that the present use of the property where they propose to place the sign is a mechanics garage, which is a non-conforming use in a residential zone and that the business does not have a free standing sign on the property now. He stated that he did not think the ordinance contemplated a development without good visibility to the public and it was his opinion that this sign would not have a negative impact on the community. He explained that the sign is meant to be a directional sign, not a sales sign. He noted that

the lack of visibility is difficult in the best of sales times but in this economic time it is a hardship.

Mr. Banisch was sworn in by Attorney Fraser.

Mr. Banisch stated that he did not disagree with Mr. Plante's testimony and brought the board's attention to H of the MLUL (promote free flow of traffic).

Mr. Peck answered Mr. Spina that when they had a directional sign they had 14 – 16 visits to the site of which 75% of the people stated that they stopped because of the sign on East Mill Road, almost exclusively on weekends, and now it is down to 50% less than that.

Mr. Banisch answered Mr. Spina that the sign will not make a big difference but it does direct the public to the subdivision.

Mr. Spina was concerned with the size of the sign.

Mr. Peck stated that they are before the board because the open house signs are not permitted and this sign is different because it is not an open house sign but a directional sign.

Mrs. Walter stated that it was not this Board's charge to look at the financial part of an applicant and noted that there are only 14 lots available.

Mr. Peck stated that it is the lack of visibility. The visibility will help them to sell the lots in a quick and efficient manor.

Mr. Cohen stated that the sign will not be used for nothing else other than the directional sign shown the board and it would come down in three years or prior to the Certificate of Occupancy of the last home.

Mr. Banisch stated that finishing the development and putting the homes on the tax rolls is significant.

The meeting was opened to the public for questions of Mr. Plante.

There were none and the meeting was closed the public for questions of Mr. Plante.

The meeting was opened to the public for comments on the application.

Laura Akin 98 East Mill Road was sworn in and stated that the board could make a maximum size of the sign smaller.

Shelly Heretyk - Douglas Drive was sworn in and stated that she was concerned about the advertising of Toll Brothers and the precedent for such a sign. She stated that we do not have these types of signs in Long Valley.

Mr. Averett answered Ms. Heretyk that each case would have to come before the board with their special reasons.

There were no further comments and the meeting was closed to the public for questions and comments.

Mr. Cohen summarized the application that it would be outside of any sight triangle and would be a professional sign.

Mr. Cohen answered Ms. Kesper that the applicant would accept a condition of a maximum size and it could be smaller if sight distance became an issue.

Mr. Averett made a motion to approve the application subject to the Township engineer approving the sight inspection, that it not be up longer than three years or the last C.O., a minimum setback of 10' and the maximum size sign as presented this evening. Seconded by Mr. Baguiao.

Mr. Cohen stated that he asked the board to take a vote with only the five members present.

Ayes: Averett, Schwemmer, Spina, Baguiao,

Nays: Walter Abstentions: Absent: Bauer, Turick, Ort,
Graziano

The motion failed.

2. Verizon Wireless – Block 28, Lot 14 – Bartley Road – R-5 Zone – 10 acres - Request for Use Variance for 120' Wireless Communications Tower – Previously Heard October 7, 2009 – Public Hearing
Continued

David Soloway, Applicant's Attorney

Joseph Menio, Applicant's Radio Frequency Engineer

Anthony Suppa, Applicants Engineer

Robert Riffel, Jr., Applicant's search area analysis consultant

William F. Masters, Jr, Applicant's Planner

Mr. Soloway reviewed that this is a second meeting on this application and he was going to try and answer the questions raised by the board last month regarding the search area.

Mr. Menio referred to search ring location map which was marked A-3. He pointed out the area of the search for appropriate sites. He pointed out where Ort Farms was located within this search area. He passed the exhibit around for the board members to view.

Mr. Soloway stated that he will supply a more detailed search area over the township tax map, but not a topographic map. He will supply copies of this information to the board.

Mr. Menio referred to Long Valley 2 search ring exhibit, which was marked A-4, and pointed out the search area, which is smaller than the coverage area, and that the search area is centralized in the coverage area. He answered Mr. Hall that there are six electrical towers in the search area.

Mr. Suppa confirmed that there are six PSE&G electrical towers in the area.

Mr. Menio answered Mr. Banisch that on the slope you only see out and not to the left or right.

Mr. Banisch stated that the reason for the question is the tower the board approved on Esna Drive, where it was installed against the side of the mountain and camouflaged as a tree, worked well.

Mr. Menio added the proposed coverage area to the exhibit.

Ms. Fraser reminded Mr. Banisch that he is under oath from his previous swearing in this evening under the previous application.

Robert Riffel, Jr. was sworn in by Attorney Fraser and presented his qualifications.

Mr. Riffel referred to Exhibit A-4 and reviewed the other properties in the area.

- Autumn View Farm (block 29 lot 18 – Bartley Road) is preserved farmland.
- Naughtright Farm (block 29, lot 18.01 – Bartley Road) is also preserved farmland and they were the only large tracts of land south of Bartley Road.

- Block 28.Lot 17, is owned by Morris County with an existing transmission line and also noted that the property is in the Highlands Preservation Area and also part of the green acres program. He explained part of the diversion process to use green acres is to prove there are no other viable sites.
- Block 28, Lot 11 there is a transmission tower, but is in close proximity to a stream (300') and there are also wetlands in the area. Mr. Suppa stated that the stream is 300' from the tower and 600' from Bartley Road. The lot has 400' frontage on Bartley Road.
- Block 28, Lot 63.01 (Vivan Farm) is in farmland preservation although it has one of the transmission towers on it.
- Block 28, lot 63, also farmland preservation
- Block 28, Lot 4 (All-D Reitherhoff Farm) is also preserved farmland.
- Block 28, Lot 4.01 – 49 acres, (Haggas) is a horse farm, but he did not know if it was farmland preserved. (Ms. Akin stated that it is preserved farmland).
- There are approximately 100 residential properties in the area.

Mr. Schwemmer stated that it would be the boards' preference for the applicant to use one of the existing electrical transmission towers.

Mr. Soloway stated that the applicant has determined that none of the five previously discussed towers were suitable or available.

Mr. Riffle answered Mr. Banisch that he did not investigate whether there were exception areas on the preserved farms. He answered Mr. Hall that there are approximately 100 properties in the search area.

Mr. Soloway stated that another witness will be able to testify that the exemption areas were looked at on the preserved farms.

The meeting was opened to the public for questions on the testimony heard.

Shelly Heretyk asked about information on patriots path including Ort farms.

Mr. Riffle stated that Columbia Trail is in the search area and pointed it out on the map.

Mr. Soloway stated that the applicant's planner, Mr. Masters would be able to answer Ms. Heretyk question.

Mr. Suppa referred to exhibit A-3 and pointed out the towers.

- Block 29, Lot 20 there is no available space is on the tower. PSE&G has leased the site to ATT.
- Block 28 lot 17 is on green acres property.
- Block 28, lot 11 has not been looked at because of the location near the stream, wetlands, highlands. He stated that prior to the next meeting it will be looked at for wetlands and location to stream, if they get the land owners permission
- Block 28 63.01 is on farmland preservation property. These are the only towers in the search area.

Mr. Soloway stated that the applicant will look into whether any of the towers are in exempt areas.

Mr. Banisch asked that the applicant see whether there are sites on the other farmland properties that have exemption areas that may be more acceptable.

Mr. Mineo stated that the silo height of 60' is not high enough. He said it was not possible to say whether another site could be used in conjunction with the silo and work. He answered Mr. Banisch that he will look into whether a two site scenario would be feasible. He was not aware of any other structures in the area that would work.

William F. Masters, Jr. was sworn in by Attorney Fraser and presented his qualifications to the board and was accepted as an expert witness.

Mr. Masters referred to the photographs submitted to the Board and stated that the views entering the Township from Chester were represented. A photo board with the six photos submitted to the board were marked A-5. He stated that the photographs were taken during the time a coverage test was being done and a crane was on the site. He pointed out the view from Route 24 which was taken at 166 East Mill Road (last house on the right traveling west) as well as the area where the electrical transmission lines crosses East Mill Road. He referred to the photographs and pointed out Patriots Path on A-6, a photo board of another six photographs.

The meeting was opened to the public for questions and comments.

Mr. Masters answered Ms. Heretyk that the tower is approximately 400' from Patriots Path.

Ms. Heretyk asked about the electro magnetic fields and safety.

Mr. Suppa stated that the tower would meet the required federal/state standards for emissions for safety.

Eileen Stokes, Historic Preservation reminded the board about the concern from Historic Preservation is from the eastbound direction and the entire area and the impact it will have on the proposed expansion of the Historic zone. She noted that the EIS does not indicated individual homes that are on the historic register or note that this expanded has been approved and eligible by the State and the boundaries suggested were reasonable.

There were no other questions and the meeting was closed to the public for this evening.

Mr. Soloway asked for a site walk date if the board would like to do so.

The board decided that a site walk was not necessary due to the visibility and familiarity of the board with the site at this time.

The meeting was adjourned to January 6, 2009.

Eligible: Averett, Schwemmer, Spina, Baguiao, Walter

Ineligible – Bauer, Ort

Absent: 10-7 – Graziano

11-4 – Turick, Graziano

3. Ort – Block 8, Lot 6 – 51 Drakestown Road – O/R Zone – 29.23 acres – Request for three lot minor subdivision – Completeness Hearing and if deemed complete a public hearing

Mr. Schwemmer announced that the application had been adjourned at applicant's request to December 2, 2009.

DISCUSSION - CORRESPONDENCE

1. Vouchers

The vouchers were reviewed. Mr. Spina made a motion to approve the vouchers reviewed by the Chairman and found in order and send same on for payment. Seconded by Mr. Baguiao. A voice vote was taken; all were in favor and the motion carried.

Mr. Averett made a motion to adjourn, seconded by Mr. Spina. A voice vote was taken; all were in favor and the meeting was adjourned at 10:15 p.m.

Virginia R. Kesper, Clerk