
PITTSFIELD TOWNSHIP ZONING BOARD OF APPEALS MINUTES

Members Present: Edward Resha, Robert Grosshans, Ishwar Naik, Alayna Stagg, Kenneth Brostrom.

Members Absent: None.

Others Present: Jeff Kermath, Jon Sniderman, Bob Vandercook, Debbi Vandercook, Ruth Vila, Gary Leiterman, Mark Pascoe, Philip Pucillo, Kurt Bynum, Robert Van Oel, Victor Lillich, Acting Associate Planner Paul Montagno, and Recording Secretary Laura Ford.

1.0 Call Meeting to Order/Determination of a Quorum

Chairperson Naik called the meeting to order at 6:35 p.m. A quorum was present.

2.0 Approval of Agenda

Motion by Member Resha, supported by Member Stagg, to approve the agenda, as presented.

MOTION CARRIED

3.0 Communications and Announcements

None.

4.0 Items from the Floor

None.

5.0 Old Business

None.

6.0 New Business

6.1 ZBA #04-10 Martin R. Vila

[submitted for a variance from the private road requirements]

Planner Paul Montagno reviewed his report. He stated that on October 7, 2004 the applicant submitted a petition for approval of a variance to the access requirements that are necessary to obtain a building permit. He said that the property is located approximately 800 feet east off Fosdick Road and abuts the south side of Hunter's Pond. He said that Section 56.05 D of the Zoning Ordinance states that, "No building permits or land division permits shall be issued for any lot or parcel until access, as required under this section, has been constructed and approved."

Planner Montagno said that Section 56.05 B states that, "Every building or structure shall be on a lot or parcel that adjoins a public or private easement of access to a public street, such public street right-of-way or public or private easement to be at least sixty-six (66) feet in width unless a lesser width was duly established and recorded prior to the effective date of this ordinance. An easement may not serve more than one (1) lot or parcel, unless a private road is constructed for which the design and construction have been approved by the Pittsfield Township Board and the Township Engineer."

Planner Montagno stated that there is a sixty-six (66) foot easement along the north side of the property. He said that the existing road consists of twelve (12) feet of paved surface and twelve (12) feet of three (3) inch thick gravel, which provides twenty-four (24) feet of travel surface. He said that Section 56.05 C states that, "The minimum standards for a "Class B" road are six (6) inches of gravel over six (6) inches of compact sand sub-base with a width of thirty-two (32) feet." He said that the existing road does not provide suitable access to the property. He said that before granting a variance the ZBA must make sure the applicant has met the following requirements. He then reviewed the requirements from his report.

Member Grosshans asked Planner Montagno to explain the materials required for the existing road.

Planner Montagno stated that the requirements were established based on the access requirements for residential and emergency vehicles and the safety of the residents.

Member Grosshans asked how many houses are needed on the road before it is considered a "Class A" road.

Planner Montagno replied six (6) homes.

Member Grosshans asked how many residences are currently on the road.

Planner Montagno replied five (5) and it is soon to be six (6) residences.

Member Stagg asked if the property in question would be the sixth (6th) home on the road.

Planner Montagno replied yes.

Member Resha asked if the road is currently considered a Class B road.

Planner Montagno replied no. He stated that the Class B roads have to be thirty-two (32) feet wide. He said that the gravel used is not the right type. He said that the twelve (12) feet of pavement on the road is not to engineering standards. He

added that next to the pavement surface a twelve (12) foot wide lane made of gravel three (3) inches thick has been added.

Member Resha stated that a previous property owner came before the ZBA to get a variance for a permit. He said that the owner stated that he would have the road be a Class B road before he received a Certificate of Occupancy (C of O).

Planner Montagno stated that that is what the owner had stated in his petition. He said that the issue was settled in a court decision. He said that the court decision was made based on inadequate information.

Victor Lillich, Township Attorney, stated that he was not involved in the previous litigation. He said that he does not know the basis for the court's decision. He said that it is his understanding from the correspondence that the ZBA record was not adequate for the court to rule in favor of the ZBA. He said that he would review the court record.

Member Grosshans asked if the gravel on the road is supposed to be used as a through fare for two (2) way traffic.

Planner Montagno stated that it was intended to be a travel surface.

The Members and staff reviewed the photographs of the site and the surrounding area.

Member Grosshans asked Planner Montagno if any construction is taking place at the subject site.

Planner Montagno replied no.

Chairperson Naik opened the public hearing.

Member Stagg asked Planner Montagno if the requirements given to the previous petitioner have been completed.

Planner Montagno replied yes. He stated that the site was recently inspected and a "T" turn around and the gravel was supposed to be installed.

Member Stagg stated that she does not feel that the gravel will last very long.

Member Resha stated that a tree is taking up the whole side of the road.

Member Brostrom stated that the minutes from the previous petition were not adequate information for the Judge. He asked Mr. Lillich if the ZBA has a legal option to appeal the Judge's ruling.

Mr. Lillich stated that the ZBA can ask for an appeal from the previous decision, although, they would have to ask for a leave of the court of appeals because they are beyond the time in which the court allows an appeal of right.

Planner Montagno read from his report and stated that no non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

Ruth Vila, petitioner, stated that she is here to appeal for a variance so she can do something with the 1 ½ acres she owns. She said that he (the previous petitioner) is using a private driveway to take homes from the acreage and using her private driveway that she put in thirty-three (33) years ago. She said that when she sold the other two (2) lots the deeds stated that the road needed to be maintained. She said that there has been a hole dug to build another home that will enter into the driveway.

Chairperson Naik asked Ms. Vila which side of the property her home is on.

Ms. Vila stated that home where the hole is being dug is on the north side.

Member Grosshans asked Ms. Vila if this is the home that she sold.

Ms. Vila replied no. She said that it is Tom Curran's property and it is the triangular property that is attached to it. She said that Mr. Curran has dug a hole so that another home could be built. She said that if he (Mr. Curran) can build a home then she should be able to sell a lot and build on it. She said that this was all on private property and people come and dump all over it.

Chairperson Naik asked Ms. Vila if she owns the property now.

Ms. Vila stated that she owned the third lot in the back of the property.

Chairperson Naik asked Ms. Vila if she knew the property was landlocked when she purchased it.

Ms. Vila stated that she owned the last lot and she sold the home with 2 ½ acres and they kept 1½ acres. She said that they knew that the property would one day turn residential.

Chairperson Naik asked if the access was always intended to come from Fosdick Road.

Ms. Vila replied yes. She said they put in the long driveway thirty-three (33) years ago. She said that she maintained the driveway for all of those years.

Member Grosshans asked Ms. Vila if she understands that the Township Ordinance pertaining to private drives has changed in the past thirty-three (33) years.

Ms. Vila replied yes. She said that the Ordinance was changed in 1988 and the driveways were grandfathered in.

Member Grosshans asked if that means that anything added to the road would also be grandfathered in.

Ms. Vila stated that she would assume so. She said that at that time four (4) homes were allowed on the driveway. She said that the fifth (5th) home came in 1996 or 1997. She said that this was when Mr. Curran dumped into her driveway.

Planner Montagno stated that every use, building, or structure established after the effective date of the Ordinance should be on a lot with access to a public right-of-way. He said that anything that was grandfathered in prior that date is not the same as what they are applying for now. He said that everything after the effective date needs to conform to the standards of the new Ordinance. He said that the road would have to be upgraded in order for them to build on the parcel. He said that the lot would be buildable, based on the size of the lot, if it had appropriate access.

Ms. Vila stated that another home is being built now that is going into their driveway.

Planner Montagno stated that he did not know about the house. He asked if the people were given access to the easement.

Ms. Vila stated no, not to her knowledge. She said that the telephone poles are even inside of her property, and the gentlemen who owned the property would not give consent to have the telephone lines on the property line. She said that the entire easement is on private property.

Chairperson Naik asked Ms. Vila if she understands that the road has to meet certain standards.

Ms. Vila replied yes.

Gary Leiterman, son of petitioner, stated that when his parents purchased the property thirty-three (33) years ago they built the 1,200 foot driveway that extends back to the last lot. He said that they had the ten (10) acres divided into three (3) lots. He said that the one driveway serviced all of the lots. He said that in 1990 they sold their home, which was on the last lot, and they sold it with 2 ½ acres and they kept 1 ½ acres. He said that the 1 ½ acres was serviced by the singular driveway that they built and maintained. He said that the property to the north was purchased by Mr. Curran and was subdivided into approximately one

acre parcels. He added that Mr. Curran ended up with two (2) parcels that were landlocked.

Mr. Leiterman stated that the Mr. Curran claimed that the private driveway, which his (Mr. Leiterman's) parents built, was not a private driveway and that it was a public road. He said that Mr. Curran came before the ZBA one year ago. He said that Mr. Curran received an agreement from two (2) property owners on the driveway, to access the private driveway. He said that Mr. Curran asked the ZBA for an additional variance to put in one more lot that would access the driveway. He said that the driveway is twelve (12) feet in from the property line. He said that the ZBA denied Mr. Curran access to the driveway. He said that Mr. Curran then went to the appeals court and they overruled the ZBA and allowed the additional driveway to dump onto his (Mr. Leiterman's) parent's driveway.

Mr. Leiterman stated that this violated his parent's rights to sell or build on the 1 ½ acre lot that they own, unless they built a Class A road. He said that this is unfair. He mentioned that the driveway was built by his parents and they paid to maintain the road. He said that the Township and the County never paid for the maintenance of the road. He said that there is no document stating the eminent domain that the County has confiscated it. He said that now that so many homes are connected to the road his parents have to come to the ZBA and request a variance.

Mark Pascoe, 465 Hunter's Crest Drive, stated that the letter he supplied to the ZBA outlines his family's opinion, and that they recommend denial of the variance unless conditions are attached to the approval. He then read his letter.

Chairperson Naik asked Mr. Pascoe where he lives in relation to the subject property.

Mr. Pascoe stated that his home is on parcel L-12-33-110-003, and it touches the Vila property on a corner.

Chairperson Naik asked Mr. Pascoe if there is access to Hunter's Crest.

Mr. Pascoe stated that they do not have access to the driveway.

Member Resha asked Mr. Pascoe who owns the triangular property.

Mr. Pascoe replied that Mr. Tom Curran owns that property and they have just begun construction.

Chairperson Naik asked if there is a home on parcel L-12-33-100-040.

Mr. Pascoe replied yes.

Chairperson Naik asked if there is a home on parcel L-12-33-100-008.

Mr. Pascoe replied yes. He said that he feels bad for the Vila's, and this is a bad situation. He said that approval of the variance will make the situation worse.

Ms. Vila stated that people are cutting down the flowering trees near her property and a lot of damage is being done in that area.

Chairperson Naik asked Mr. Pascoe how he came to the conclusion that ten (10) additional homes could connect to the driveway.

Mr. Pascoe stated that at the ZBA meeting where Mr. Jasinski showed his master plan, there was ten (10) acres divided into one unit per acre. He said this would equal approximately ten (10) homes. He said that the Washtenaw County Road Commission (WCRC) is denying him (Mr. Jasinski) access onto Fosdick Road and his only point of access is onto this driveway.

Member Grosshans asked if a turn around was installed in the rear of the property.

Mr. Pascoe stated that he does not see it. He said that what is happening out there is a joke.

Bob Vandercook, 7515 Fosdick Road, stated that he (Mr. Curran) has dumped gravel into the (turn around) area.

Member Resha asked Mr. Vandercook how large the turn around is.

Mr. Vandercook stated that it is not very large. He then read a letter from Esther Leo, a resident of Fosdick Road, which opposed the variance. He stated that he is also opposed to the variance. He said that the gravel was dumped on his property and there was no sand compacted under it. He added that the gravel was dumped onto the grass. He said that Mr. Curran told him that he owed the sixty-six (66) foot easement. He said that Mr. Curran did not want to build on the neighboring property because he would have had to build a road. He said that the easement is natural drainage and Mr. Curran has cut down the vegetation and the trees.

Mr. Pascoe stated that this is a regulated wetland.

Member Resha stated that the Township staff needs to inspect the property.

Mr. Vandercook stated that Mr. Curran wanted to install a road coming off the private driveway that would connect to his other lots.

Planner Montagno stated that this was ZBA 03-06 Curran.

Debbi Vandercook, 7515 Fosdick Road, stated that Mrs. Vila has been a wonderful neighbor. She said that she is concerned that the road is not sufficient

for emergency vehicles. She said that the road looks terrible and it will not hold up. She asked who would pay for the Class B road.

Mr. Resha stated that if the road has to be brought up to a Class B road then the homeowners would share in the cost, depending on their amount of frontage.

Mrs. Vandercook stated that the sixty-six (66) foot easements crosses the front of their property. She said that they were never notified about this hearing. She said that she is opposed to this variance.

Kurt Bynum, 7491 Fosdick Road, stated that he is opposed to this variance. He said that when he bought his home the parcel was zoned as non-buildable. He said that the easement does not affect him but the road is an eye soar. He said that the road is crushed rock not gravel. He asked the ZBA to look at the road. He said that he cannot believe that this issue has gone this far. He added that there is no turn around for the road and people turn around in his property.

Robert Van Oel, 7675 Fosdick Road, stated he owns fifteen (15) acres in the area. He showed the Members where his property is located. He said that the road is an eyesore. He said that the Vila's split off 1 ½ acres, although, they were in a rural residential zone that required 2 ½ acres to have a buildable parcel. He said that he wanted to split off a parcel for each of his two (2) daughters. He said that he worked with Mr. Mark Spencer regarding the property split. He said that the ten (10) acres have no obstructions and no wetlands. He said that he could not split it into four (4) parcels because to build you have to have 2 ½ acres with no easements.

Mr. Van Oel continued and stated that Mr. Spencer said that he would not allow three (3) building sites on ten (10) acres. He said that Mr. Spencer said that he would allow a private driveway for the first parcel. He then explained the parcel splits. He said that Mr. Spencer rejected the three parcel splits. He said that he had to join the parcels and make an eight (8) acre parcel in order to split off the two (2) parcels. He said that it cost him \$10,000 for people to scarf out a twelve (12) foot scarf and then they brought in eight (8) inches of sand and then regular rock. He said that they he had to trim trees and receive permits. He said that the Vila's 1 ½ acres was denied as a buildable parcel. He said that it is in a rural residential zoning district that requires 2.5 acres to build on.

Planner Montagno stated that the Vila property is in higher density, which is one dwelling unit per acre.

Mr. Van Oel stated that the Vila's want to service the property through a rural residential area.

Planner Montagno stated that if the lot had an acceptable road it would be buildable.

Member Resha stated that Mr. Curran is building the property under a court order. He said that the ZBA denied Mr. Curran's previous petition because the road did not meet the standards. He said that the Vila property is buildable, although, it is not buildable if the road stays in its current condition.

Mr. Van Oel asked about the turn around.

Member Resha stated that the turn around is supposed to be there.

Mr. Pascoe stated that Mr. Curran might be in violation of his court order because he has not installed the things he was supposed to.

The Members and Mr. Pascoe discussed the specifications that Mr. Curran submitted to the ZBA.

Member Grosshans asked who enforces the specifications.

Mr. Pascoe stated that when he spoke with Mr. Spencer he was unsure. He said that the court order is brief and unclear.

Chairperson Naik asked Mr. Lillich how the specifications would be enforced.

Mr. Lillich stated that this (the specifications) is not part of the court order. He said that the specifications were submitted as part of the application to the ZBA. He said that the court ordered that the previous decision of the ZBA would be overturned and the appeal of the petitioner, Mr. Jasinski, was ordered back to the ZBA so that they could grant the appeal. He said that this (the specifications) were part of the petition and the ZBA was ordered to grant the petition. He said that he is not sure whether additional conditions were allowed.

Member Resha stated that the specifications say that the turn around would be designed to the Township's standards.

Mr. Lillich stated that these specifications have not been satisfied. He said that they may be enforceable and if the variance was granted, with these conditions attached to it, then he would have been in violation of the Zoning Ordinance.

Member Brostrom stated that legally this road is considered a private road. He asked if this road would become a public road.

Mr. Lillich stated that the Judge's decision does not say one way or another.

Member Resha asked if the building permit has been issued.

Planner Montagno replied yes.

Member Resha asked if the site is under construction now.

Mr. Vandercook replied yes.

Member Resha stated that he is not only in violation of the Township Ordinance, but he is also violating the variance. He asked if the building can be stopped until he meets the requirements.

Planner Montagno replied yes, until he is in compliance with the court order. He said that the building permit would not have been issued until the road was completed to the specifications.

Member Resha asked why the building permit was issued. He said that the road is far from meeting the specifications.

Mr. Lillich stated that if there was a condition that the road be constructed in accordance with the conditions and this was not done, than a stop work order could be issued.

Member Grosshans stated that he asked Mr. Spencer, during the September 27, 2004 meeting, about the status of the one lane driveway off Fosdick Road. He said that Mr. Spencer said that the lane should have been installed and it had not been, and that the building permit would not be issued until the driveway improvements were completed.

Mr. Lillich stated that the building permit should not have been issued if the improvements had not been completed.

Member Resha asked what legal options the Township has now, in regards to a stop work order, because the permit was issued.

Mr. Lillich stated that someone needs to find out why the building permit was issued, and understand that the conditions that needed to be met were not met. He said that the department would then issue a stop work order. He said that the Township Building Department might have had another reason for doing what they did.

Member Grosshans asked what Judge Conner issued regarding conditions.

Mr. Lillich stated that there were no specific conditions that he is aware of. He said that the Judge said that they could use this as an access drive. He said that the only conditions is what was submitted with the application.

Member Grosshans stated that the specifications say that, "In the future I intend to connect a Class A road to the existing non-conforming road. When I connect the road, I will asphalt the twelve (12) foot fire lane from Fosdick Road up to the connecting road." He asked what the connecting road was.

Mr. Pascoe stated that this was Equestrian Court, which was approximately one hundred (100) feet.

Member Grosshans stated that if this was approved then the road would change from a Class B road to a Class A road.

Mr. Pascoe stated only the first one hundred (100) feet.

Member Stagg stated that more research should be done.

Phil Pucillo, 7451 Fosdick Road, stated that if the construction was shut down the remedy for the builder would be to go back to Judge Conner's. He said at that point everyone could get clarification from Judge Conner's.

Member Grosshans asked if Mr. Pucillo's home accesses the road.

Mr. Pucillo replied yes.

Member Grosshans asked Mr. Pucillo how he received access to the road.

Mr. Pucillo stated that he is not sure. He said that he did not know about the issues until Mr. Curran was denied by the ZBA. He said that he was told that his house should not be there because he should not have access to be road. He said that if the Judge reversed Mr. Curran's petition than he does not see why he wouldn't reverse the Vila's petition if they were denied.

Ms. Vila stated that she thought the driveway was illegal, although, she thought if she did something about it then he would not be able to get to his home. She said that this would have created major problems for everyone.

Mr. Leiterman stated that this request would not be needed if the additional properties did not dump the driveways onto her private driveway.

Jeff Kermath, 490 Hunters Crest, stated that they can access the road by a road that Mr. Curran plans on installing. He said that the ZBA is being set up for the next phase of the split. He said that half of the road is paved and the other half is gravel. He said that when people drive on the road they default to the pavement and so does the on-coming traffic and this can cause accidents. He said that the court can issue an order but the ZBA should not let Mr. Curran decide what the road will be made out of.

Mr. Bynum asked when the zoning of the original property was changed.

Planner Montagno stated that he could show Mr. Bynum the Township Zoning and Future Land Use maps that show the zoning. He said that the zoning would have been changed during the adoption of the Comprehensive Plan in 2001.

Motion by Member Resha, supported by Member Stagg, to close the public hearing.

MOTION CARRIED

Motion by Member Resha, supported by Member Stagg, to postpone ZBA 04-10 Martin R. Vila, until such time that research can be done from a legal stance and the case of the road.

Discussion:

The Members requested the following information from staff: the full order of Judge Conner's, how they (ZBA) can enforce the requirements of the construction of the road, why the building permit was issued and can the building permit be withdrawn, (staff) research the ZBA minutes for the conditions of the variance, and review what happened after the Judge ordered it to come back to the ZBA.

Member Brostrom asked Mr. Lillich to review the court records.

Mr. Lillich stated that he will obtain the transcripts.

The Member's and Mr. Lillich discussed a special assessment district.

The Members agreed that the requested information should be entered into the motion.

Member Resha accepted the amendment to the motion.

Amended Motion:

Motion by Member Resha, supported by Member Stagg, to postpone ZBA 04-10 Martin R. Vila, until such time that legal research can be done regarding the case of the road, in order to obtain the following information; the full order of Judge Conner's, how they (ZBA) can enforce the requirements of the construction of the road, why the building permit was issued and can the building permit be withdrawn. Furthermore, staff should research the ZBA minutes for the conditions of the variance, and review what happened after the Judge ordered it to come back to the ZBA.

MOTION CARRIED

7.0 Zoning Administrator's Report

7.1 Calendar for 2005

The Members accepted the calendar for the 2005 ZBA meeting dates.

8.0 Member's Report

The Member's discussed Judge Conner's decision.

9.0 Secretary's Report

None.

10.0 Chairperson's Report

None.

11.0 Approval of Prior Minutes

11.1 Minutes of September 27, 2004

Motion by Member Resha, supported by Member Brostrom, to approve the minutes of September 27, 2004, as presented.

MOTION CARRIED

12.0 Adjournment

Motion by Member Resha, supported by Member Stagg, to adjourn the meeting.

MOTION CARRIED

Chairperson Naik adjourned the meeting at 8:23 p.m.

s/Alayna Stagg, Secretary

January 24, 2005