

DILLSBURG BOROUGH
ZONING HEARING BOARD
MINUTES
SEPTEMBER 25, 2008
7:00 PM

The Dillsburg Borough Zoning Hearing Board held their business meeting at the Dillsburg Borough Office on the above-mentioned date. Zoning Hearing Board Members in attendance were Chairman Donald Will, Jeff Beitzel and Greg Wonders. Also present were Solicitor Linus Fenicle, Borough Manager Karen Deibler and Borough Secretary/Treasurer Debbi Beitzel.

The following visitors were present: Applicant Fred B. Smith, Fred B. Smith II, Todd Lyons from Lyons Surveying LLC, Planning Commission Representative Leon Zeiders, and Dillsburg Borough Residents Henry and Pam Snyder.

The meeting was called to order by Chairman Donald Will at 7:00 PM.

The first item on the agenda was the approval of the July 24, 2008 meeting minutes. Greg Wonders moved to approve the minutes as presented. Jeff Beitzel seconded the motion. – Motion Carried.

Solicitor Fenicle had sworn in four people (Fred B. Smith, Fred B. Smith II, Todd Lyons and Henry Snyder).

Chairman Will indicated the purpose of this hearing was a request for a residential density variance received from Fred and Lola Smith for the property at 10 East Welty Avenue.

Fred Smith gave some background history on the property and described what his intentions were.

Solicitor Fenicle asked, if the variance was granted, would it alter the character of the neighborhood. Mr. Smith stated no. Solicitor Fenicle asked if the neighborhood was all residential. Mr. Smith stated yes, except for the one side is the Old Myers Food Store and diagonally across the street is a dentist office. Solicitor Fenicle asked if the variance of density impair the use or development of any adjacent property. Mr. Smith stated no. Solicitor Fenicle asked if it would be detrimental to the public welfare in any manner. Mr. Smith stated no. Solicitor Fenicle asked how long the three lots have been in existence. Mr. Smith stated prior to 1949. Mr. Smith indicated his property is surrounded on two sides by the Old Myers Food Store and on the other side is the property of Hank Snyder. Solicitor Fenicle asked if the property was in the Residential Urban District. Manager Deibler stated yes. Solicitor Fenicle asked if the minimum lot requirement for the R-U District is 6,000 square feet. Manager Deibler stated yes. She indicated the applicants have already been to the Planning Commission and got the Subdivision Plan conditionally approved based on the ZHB decision; it met everything except for the density. Solicitor Fenicle asked if it had public water and sewer. Mr. Smith stated yes.

Chairman Will asked if there were any testimonies. Mayor Hank Snyder introduced himself and indicated he was representing himself as a Dillsburg Borough citizen, not the Mayor. Mr. Snyder made the following statement:

He indicated when Fred told them they were going to build a house in the empty lot adjacent to his home, they were disappointed. He stated as long as they were in their legal rights, they had no grounds to complain. He stated this wasn't to say they didn't have a problem with it; it just meant they believe Fred had all the rights to do what he wanted to do with his property, as long as he stayed within the Borough codes. He indicated they eventually came to the point of accepting it, besides the following requirements were met, they would enjoy having Fred, Jr. and his wife, Dara and her two daughters living next door; because they were a very nice family and would appreciate both Smith families wanting to live next door to each other. He then indicated it was to their surprise when they received a notice about a variance being needed because the new dwelling didn't meet the three dwellings per acre density code. He indicated in order to understand what this meant they started looking into the engineering drawings and doing their homework. He stated after doing some researching, they found the density was not the only code that was not being met. He indicated he understood the density issue was the only item before the ZHB; it was only off by a small amount but it was off.

Mr. Snyder indicated the distance between our driveway and the driveway of the proposed structure isn't met; according to the Borough Code Book section on driveways (Section 22-506.7.A.5.c) a location of a driveway can't be within 40 feet of another driveway/access drive. He indicated according to their recollections of the engineer's drawings the distance between the two driveways would be less than 20 feet. Mr. Snyder stated if the variance is granted, they would be addressing this violation in the future with officials at the appropriate level.

Mr. Snyder indicated the minimum separation distance between buildings isn't met; according to the Borough Code Book Section 27-509.3.B a building separation requirement of 25 feet shall apply to all occupied buildings, in all zoning districts within the Borough of Dillsburg. He indicated the measurement is taken from the outer portion of the exterior wall of the first building (his house) from a point where the buildings are closest together. He indicated according to the engineer's drawings the distance between our house and the new structure is somewhere around 15 feet. Mr. Snyder stated if the variance is granted, they would be addressing this violation in the future with officials at the appropriate level.

Mr. Snyder indicated according to his personal conversation with Mr. Smith he stated they are using a 10 foot setback from the side property line; according to the Borough Code Book Section 27-413.B.2 side setbacks must have a width of 15 feet each or may be reduced to 12 feet in the case of a single-family dwelling on a lot having a width of not more than 90 feet. He indicated building a house with a 10 foot setback violates another code. He indicated during the 60 plus years the building lot has been sitting vacant, Borough Codes and regulations have evolved for the good of the community, such as codes that address public issues, safety issues or overcrowding of houses. He stated homes built today must meet the requirements

of the regulations in effect right now. He indicated in light of the density problem and the additional code violations; we are asking the Zoning Hearing Board to deny the variance request requested by Fred and Lola Smith. He continued by indicating as the Zoning Code states “a variance is for cases where it is alleged that the provisions inflict unnecessary hardships upon the applicant”, which isn’t the case.

He concluded his testimony and asked when the drawings were signed. He indicated the plans were signed on the 21st, so signing the plans ahead of time is making the assumption the meeting is already done.

Fred Smith II asked if the meeting was a code enforcement meeting or a zoning meeting. Chairman Will stated the ZHB isn’t in the position to enforce codes. Solicitor Fenicle indicated the ZHB will only vote on the applicant’s request for a density variance and won’t address any other issues.

Mr. Todd Lyons indicated he was the surveyor /engineer for this plan and the reason it’s signed and sealed is because it’s a requirement for submission. He stated once the plans are accepted, they will produce a set of plans that meet all the outstanding conditions and will sign and date them accordingly. He indicated KPI had reviewed this plan in its entirety for the lot information that is referenced for the requirements for the zone and have followed the requirements with a 10 foot side setback according to the R-U District. Mr. Lyons indicated the driveway placement was something he was unaware of and could be handled as far as a 40 foot separation distance. Mr. Lyons indicated as far as the 25 foot between buildings; is actually within your own property.

Mr. Snyder reminded the ZHB members they were voting on the density and the density is over according to the Borough Ordinance and shouldn’t set precedence.

Mr. Fred Smith II indicated on behalf of the density, he didn’t know when the density code was changed, but does know of two houses that have been built which don’t meet the density requirements.

Chairman Will asked if there were any more testimonies. There weren’t any. Solicitor Fenicle asked if notice of the hearing was duly advertised in the newspaper. Manager Deibler stated yes, letters were sent to the neighbors and a notice posted on the property. Chairman Will closed the record and stated the board would withdraw for a brief executive session at 7:30 PM.

The Zoning Hearing Board meeting reconvened at 7:37 PM.

Chairman Will indicated the Board discussed the matter and came to the conclusion the request represents a de minimus request; a small variation from the requirement of the ordinance and has met the requirements for a variance. Chairman Will moved to grant the variance as requested to Section 27, 509.2.A. Jeff Beitzel seconded the motion. – Motion Carried.

Solicitor Fenicle indicated the Board has 45 days to issue a written decision. He also noted there is a 30 day appeal period after the written decision is entered.

Greg Wonders moved to adjourn the meeting at 7:40 PM. Jeff Beitzel seconded the motion. – Motion carried.

Respectfully Submitted,

Debbi L. Beitzel, Secretary/Treasurer

cc: Zoning Hearing Board Members
Solicitor Fenicle
Dillsburg Borough Council Members
Dillsburg Borough Planning Commission
Mayor Snyder
Manager Deibler
Solicitor Allshouse
Engineer Knoebel