

DILLSBURG BOROUGH ZONING HEARING BOARD  
MINUTES  
FEBRUARY 28, 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 Donald Will and Jeff Beitzel. Also present were Solicitor Linus Fenicle, Stenographer Roxy Cressler, Borough Manager Karen Deibler and Borough Secretary/Treasurer Debbi Beitzel.

Chairman Boelhouwer was not present due to having surgery.

The following visitors were present: Planning Commission Representative Paul Eurich, Chris Hoover, Jeannette Mikos, Michelle Gettle, Megan Schultz, Gema Weigel, Julie and Bill Dennerlein, Ken and Ellen O'Connor.

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

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

Don Will indicated the purpose of this hearing was a request for several variances from Daniel and Jeannette Mikos for the property at 30 Greenbrier Lane.

Stenographer Roxy Cressler had sworn in the three (3) people (Chris Hoover, Kevin O'Connor and Jeannette Mikos) that planned on speaking.

Don Will asked if item 6g (special exceptions) on the application was applicable or not. Solicitor Fenicle asked the applicant if they were asking specifically for any special exceptions. Chris Hoover from Hoover Engineering Services indicated they are requesting zoning variances to the specific sessions. Solicitor Fenicle indicated item (Section 507.a(4)) is simply requesting permission from the ZHB to allow the additional parking on lot 4. Mr. Hoover stated it was requested from the Planning Commission for the ZHB to consider and grant the request. Solicitor Fenicle stated the applicant wasn't asking for any special exceptions. Mr. Will clarified that the ZHB couldn't act on Subdivision and Land Development issues. Solicitor Fenicle indicated the zoning ordinance references some of the items have to be done in compliance with the Subdivision and Land Development Ordinance. He recommended to the Board, the applicant needs to seek modifications or waivers from the Subdivision and Land Development Ordinance before the Borough Council, because they have jurisdiction of the Subdivision and Land Development Ordinance. Mr. Hoover indicated they submitted the request for interpretation or clarification and would submit with the Subdivision Plans, the Subdivision and Land Development waivers/modification request; however

with the Zoning Ordinance being written the way it is, approval from the ZHB is also needed. Mr. Hoover stated they would be willing to withdraw the request and deal with Borough Council, if the Board wishes. Solicitor Fenicle stated to the applicant the request didn't need to be withdrawn, as much as the Board making a decision as to where it stands in regards to these Subdivision and Land Development Ordinance issues. He believes it should be part of the decision because it's referenced in Section 27-507.1.A(2) of the Zoning Ordinance. Solicitor Fenicle asked if the items in which the applicant is seeking variances for, are addressed in the SLDO. Mr. Hoover stated yes. Solicitor Fenicle's recommendation to the applicant from a legal standpoint would be to defer from the particular provisions and for the applicant to seek relief from the provisions from the Borough Council. The ZHB members agreed. Mrs. Mikos asked if these were to go before Council, would she be within the time period to go before the Council in early March. Solicitor Fenicle stated it would be connected with the Subdivision and Land Development Plan and that would be the time in which to request relief from the provisions. Mrs. Mikos stated at the previous Planning Meeting, the plans were tabled based on the ZHB's decision and now it would set them back another month. Mrs. Mikos indicated the property was currently under contract. Manager Deibler indicated with or without the approval of the provisions, Mrs. Mikos would have to go the Planning Commission next, before Council could make a decision. Solicitor Fenicle indicated he was hesitant and didn't want to recommend the ZHB start to grant variances or provisions from the Subdivision and Land Development Ordinance.

Mr. Will stated a comment was received from the York County Planning Commission another variance was required to Section 413.b.3 because of a rear setback. Solicitor Fenicle indicated the Board should only address the ones that were applied for. Mr. Hoover stated the YCPC indicates this variance is required and respectfully disagrees with the comment. He continued the setback line which they are referring to is actually the buildings are existing non-conforming buildings in relation to the building setbacks and aren't creating that non-conformity, it's an existing situation.

Solicitor Fenicle asked the owner to give some background on the property. Mrs. Mikos indicated the property was purchased on November 5, 2007 and the house on 30 Greenbrier Lane consists of a single family home and a garage. It's currently under contract with a young married couple, who are anxious to remodel the property. The property wouldn't be used as business or rental. Don Will asked if the couple was purchasing the home entirely contingent on the ZHB granting the variances. Mrs. Mikos stated yes.

Don Will indicated the Board has to consider hardship as one of the guiding principles; whether or not it creates a hardship for the applicant or if the applicant created the hardship themselves. Mr. Will asked if the property remains as is; would it not be feasible to use the house in anyway. Mrs. Mikos stated it was their belief that the Borough wouldn't want it to be a rental property, but to have a permanent resident there and paying taxes. Solicitor Fenicle asked how long the property has existed as one lot with a five-unit apartment building and a single family dwelling on it. Mrs. Mikos stated she wasn't sure, but Dave and Amy Knauer had owned it previously. Mr. Hoover

indicated the Knauer's had prepared a Subdivision Plan dating back beyond 1979, subdividing one large lot into three lots (one of those lots is Lot3). Mr. Hoover indicated it would be difficult to touching on what the request is based on as far as hardship. This property is unique, which is approximate 21,000 square foot lot; two dwellings existing on it with shared access and parking. This an opportunity to subdivide off a part of a property in need of repair which is under contract to be purchased and to upgrade the property; unfortunately if the property at 30 Greenbrier Lane remains as a rental unit, there would be no guarantee the upgrade would occur. Mr. Hoover stated the hardship is that there is no way the property could be subdivided in strict conformance with the ordinance.

Don Will indicated the other item to consider would be the impact on the community and the public's interest. He stated a single family home would more desirable to the community, but we can't project into the future what people would do beyond that time. Mr. Will indicated he had concerns about creating an irregular property that may run up against problems in the future.

Solicitor Fenicle indicated the applicant/engineer should go through specifically each variance request and offer their testimony on each item. Mr. Hoover referred to the plan that was sent with the application and Solicitor Fenicle indicated the plan would be marked "Exhibit A". Mr. Hoover indicated the existing property located at 30 Greenbrier Lane is located on the southwestern corner of the intersection of Greenbrier Lane and Harrisburg Pike. The entire parcel consists of approximately 21,400 square feet; situated on the parcel is a two-story multifamily unit containing five (5) rental units and a single family dwelling and adjacent is a one story garage; access to the site is off of Greenbrier Lane with a gravel macadam driveway coming in having an existing width of 12-14 feet and then opens up to additional stone and gravel parking. The intent of the request is to subdivide off lot 3 and lot 4 of the tract; lot 3 of the tract contains the multifamily dwelling would consist of 16,000 square feet; while lot 4 would consist of 5,315 feet. The request is due to the uniqueness of the property is from Section 413.A.1a dealing with the minimum lot area requirement within the RS Zone. The particular requirements in the zone list a lot area of minimum of 10,000 square feet; lot 4 has a difference of 4,685 square feet.

The additional dimensional request is from Section 413.A.2a dealing with required frontage for the different size lots within the zone for a 10,000 lot; a lot frontage of 65-feet along the street line is required. We are proposing a lot width of 56.31 feet, a variance of 8.69 feet.

The last request deals with Section 507.a.4 which deals with off-street parking. Mr. Hoover indicated the ordinance does allow for the required off-street parking to be placed on lots other than the lot where the principal dwelling is located. He stated by ordinance they are required to provided a total of ten (10) parking spaces for lot 3 and two (2) of those spaces would be located on lot 4. A joint use access and cross easement agreement would be prepared and recorded. Mr. Hoover indicated they are requesting to provide the single family dwelling with its own lot.

Jeff Beitzel asked if the house is sold five years from now, would the new owners have to leave the two (2) parking spaces on their property for the rental units to use. Solicitor Fenicle stated the Board could require and mandate there be a recorded permanent easement placed at the courthouse for the two spaces. Mr. Beitzel asked when the other two parcels at the other end of the property are developed, would they use the joint access. Mrs. Mikos stated they would front Harrisburg Pike. Solicitor Fenicle asked the applicant/engineer to describe the surrounding area. Mr. Hoover stated the surrounding area is made up of mostly single family dwellings on lots averaging ½ acre or larger (20,000-30,000 square feet). Mr. Hoover indicated the RS zone does allow for a mix of single family or multifamily dwellings with different approvals.

Mr. Beitzel asked if the five units in the rental are all occupied. Mrs. Mikos indicated four out of the five are occupied. The other one has been renovated and is now being shown for rent.

Solicitor Fenicle asked if there were any way they could do the subdivision to make lot 4 larger than the 5,315 square feet. Mr. Hoover indicated the only way the subdivision could be reconfigured and bring it closer in conformity to the ordinance, would be to create an odd shape lot. Solicitor Fenicle asked if this would in any way affect the use or development of any adjacent properties. Mr. Hoover stated it would not; we're proposing to improve the situation that is there because there is some off-street parking provided, however it's not defined off-street parking and as a result of the subdivision, the off-street parking would be better defined and provide the required number of off-street spaces. Mr. Beitzel indicated his concern was there was no sidewalk in front of the property (30 Greenbrier Lane) and when people walk past; they have to go out into the street. He is also concerned with 12 vehicles coming out of one driveway and making the lot even smaller. Mr. Hoover indicated they are proposing to install sidewalks along the frontage of Greenbrier Lane from where it ends along Harrisburg Pike to the frontage of the home; now due to the existing conditions of the home and location, it would be impossible to bring the sidewalk across the front porch. Mrs. Mikos stated with all the parking in the back, there are two units that face the back of the property and they would be using the parking spaces in the back. She stated the units that face the front (Harrisburg Pike) usually park along the curb. Mrs. Mikos indicated currently there are only two vehicles parking in the back; during snow removal, there might be more than the two.

Solicitor Fenicle stated in order to subdivide the property and sell the single family home, the applicant is in need of the variances. Mr. Hoover and Mrs. Mikos stated that is correct. Solicitor Fenicle stated the hardship the applicant was suggesting, was that they couldn't make reasonable use of the property in the sense of subdividing it and selling the single family home without the variances. Mr. Hoover stated that was correct. Mrs. Mikos indicated when the Knauer's owned the property, they had taken the plan to be subdivided in 2000 and received an approval for subdivision, but never had the subdivision recorded. Manager Deibler indicated it was in 1994. Mr. Will indicated the Borough Council felt the ZHB made a wrong decision at that time. Discussion on surrounding lot sizes (York County Parcel Map entered into as "Exhibit B").

Mr. Will indicated the Board would like to hear from the public. Mr. Ken O'Connor, 205 Harrisburg Pike, indicated he had some questions, observations and thoughts. He asked if the parking spaces on the south end of lot 4 were for the 5-unit dwelling or the single family home. Mr. Hoover stated they would be for the 5-unit dwelling. Mr. O'Connor stated whoever buys the home would lose ownership of the driveway, because of the mandatory easement or shared use of the driveway and asked if there wasn't a better way to rezone the property, where it gives the future homeowners a little more property and safety. Mr. O'Connor stated he has lived in the area for a number of years and this is a lot that is holding back development of the community because of the proximity of the home is to the street. It's not safe for people to walk on that side of Greenbrier Lane. It's a safety hazard for pedestrians that live in the area and a significant risk for the people who will move into the home, with it being close to the curb. Mr. O'Connor stated both sides of the property (Welty Avenue and Greenbrier Lane) impose a fair risk of automobile accidents due to the nature of the blind spots; the cars parked along the front of the 5-unit dwelling add to the risk. Mr. O'Connor indicated if he were to purchase the home, his concern is the configuration of the driveway and the home. He believes it would be difficult to come and go from the driveway due to the blind spots. Solicitor Fenicle asked if the access drive was off of Greenbrier Lane. Mr. Hoover indicated yes and the existing driveway provides access for both the single family and the 5-unit dwellings with a width of 12-14 feet. Mr. Hoover stated they are proposing to better define the required parking spaces and widen the width of the driveway to meet the access width requirements. He stated they are restricted coming off of Greenbrier Lane due to the location of an existing utility pole and a fire hydrant; so the 18-foot width driveway can't be met, but 5-10 feet behind the curb line the access drive is then being proposed to be widened to 18-feet. Solicitor Fenicle asked if the driveway goes clear back to the two parking spaces in questions. Mr. Hoover stated the driving access would go back to the parking spaces. Solicitor Fenicle asked if the driveway would be going through the middle of the lot. Mr. Hoover indicated the driveway would be going along the eastern property line of lot 4. Discussion on the driveway.

Mr. Will asked if the new owners would likely be using the garage as a garage or for storage. Mrs. Mikos indicated the garage is a large size which two cars could be parked in and another area for storage. Mr. Beitzel asked how big the garage was. Mr. Hoover indicated it's a 3-bay garage and approximately 24 X 28. Manager Deibler asked if there was a real floor in the garage. Mrs. Mikos stated the garage floor was concrete.

Mr. Hoover asked if they could cross examine Mr. O'Connor. Solicitor Fenicle stated yes. Mr. Hoover asked what was meant by "everything is growing around us and time has come for this". Mr. O'Connor stated when the home on lot 4 was built, the sidewalks weren't established, Greenbrier Lane might not have been as wide as it is today, so as the community grows, the sidewalk and the road encroaches on the home; the community continues to develop. He indicated if a poll was taken from the neighbors, their preference would be to have a sidewalk, see a home that would be more consistent with the rest of the homes for the property values. Mr. O'Connor stated they

didn't have the power to move the home or dismantled it. Mr. Hoover asked if he thought the home should be demolished. Mr. O'Connor indicated no, they would like to see someone live there, but he didn't feel the applicant met the standards for the rezoning, he felt the justification for the rezoning was for financial hardship due to a possible poor financial decision. Mr. O'Connor stated everything to the eastern side of the property for 18-feet is dual use. He indicated there is a large area of green space that could be used for parking. Mrs. Mikos indicated the future owners are aware of the property lines and want to buy the lot as it is proposed. Mr. O'Connor indicated the Board is here to discuss and make a decision that's going to be best for the future. Mrs. Mikos indicated the single family home has been there for about 125 years and it would be sad to take away a piece of history. She indicated the house is structurally sound and it would be a shame not to put it back to use as a single family home.

Solicitor Fenicle asked if the Borough had a position on the request for variances. Manager Deibler indicated the Borough Council hasn't discussed the issue; however they would like to have the sidewalk installed up Greenbrier Lane which was supposed to be put in at the prior subdivision.

Mrs. Mikos indicated the people that would like to purchase the home are currently putting time into the home and renovations have been done. Mr. Beitzel asked why someone would invest money into a house before they purchased it. Mrs. Mikos stated they haven't invested any money, just their time.

Mr. Beitzel asked why off-street parking couldn't be put on the grass area on the corner of Greenbrier Lane and Harrisburg Pike. Mr. Hoover indicated they are trying to utilize and work with existing features that are all ready there. If the creation of new features occur, several issues come up, such as: curb cut (new driveway coming onto Greenbrier Lane or Harrisburg Pike), and stormwater management. Mr. Hoover indicated if the subdivision doesn't occur, the improvements wouldn't happen and he believes it's in the best interest of the Borough to make these improvements that was previously indicated. Manager Deibler indicated the Borough could request the sidewalk be installed whether the current subdivision plan request gets approved or not, because that was part of the original subdivision plan, which is recorded with the sidewalk installed.

Solicitor Fenicle asked if the parking spaces to the rear of lot 4 would be accessible to the parking spaces on lot 3. Mr. Hoover indicated yes. The people using the parking spaces on lot 3 would use the driveway on lot 4 to enter. Discussion on the parking spaces.

Solicitor Fenicle asked if there was anything in the zoning ordinance that indicates the easement areas couldn't be part of the lot area requirement. Mr. Hoover stated in researching the ordinance the lot area doesn't take in account subtraction of easement areas or stormwater management.

Mr. Beitzel asked how long it's been since someone lived in the single family home. Mrs. Mikos stated it was spring or summer of 2007.

Mr. Will stated he would like to have more time to more thoroughly think things through before making a decision. Solicitor Fenicle indicated the Board has 45 days

from the time to close the record to make a decision. Mr. Will asked if a decision had to be made at a public meeting. Solicitor Fenicle stated that was correct under the Sunshine law. Solicitor Fenicle indicated the Board could close the record, but continue the hearing until March 27, 2008 at 7 PM and make the decision or schedule another date. Mr. Hoover requested to keep the meeting open until the next meeting and be able to provide additional testimonies if needed.

Mr. Donald Will made a motion to keep the record open and continue the hearing until March 27, 2008 at 7:00 PM at the Borough Office. Motion was seconded by Mr. Jeff Beitzel. – Motion Carried.

Donald Will moved to adjourn at 8:23 PM. Jeff Beitzel seconded the motion. – Motion Carried.

Respectfully Submitted,

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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