

Lower Paxton Township  
Zoning Hearing Board

June 22, 2023

Members Present:

- David Dowling
- Allen Hansen
- Greg Sirb
- Mark Emery
- Joe Murphy

Also, In Attendance: Tucker Hull, Amanda Zerbe, Kristi Focht

Docket 1464

Applicant: Aquavision, Inc.

Address: 471 S. Middlesex Road, Carlisle PA 17015

Property Owner: Dennis and Stacey Duryea

Property: 6520 Plowman Ridge Harrisburg PA 17111

Applicant: For a variance from section 203-311-H (3) of the Zoning Ordinance for the requirement to filter views of denser housing from any adjacent housing that is less dense. The plan shows a 30' wide landscape buffer. The applicant proposes to encroach the buffer area.

Fees Paid: May 23, 2023

Advertised: June 8, 2023 & June 15, 2023

Posted: June 15, 2023

Mailings Sent: June 1, 2023.

The Hearing Began at 7:05 p.m.

Mr. Dowling swore in applicants: Chadd Jovanelly, builder with Aquavision and Dennis Duryea, homeowner.

Mr. Dowling swore in Amanda Zerbe, Zoning Officer.

Mr. Dowling questioned if the application had been properly advertised and hearing notices posted. Ms. Zerbe answered that it was paid on May 23, 2023; advertised in the Hummelstown Sun on June 8, 2023, and June 15, 2023; posted on June 15, 2023, and mailings were sent to surrounding properties on June 1, 2023.

Mr. Dowling questioned Ms. Zerbe on the ordinance the applicant is seeking a variance from.

Ms. Zerbe answered section 203-311-H (3) of the Zoning Ordinance for the requirement to filter views of denser housing from any adjacent housing that is less dense. The plan shows a 30' wide landscape buffer. The applicant proposes to encroach the buffer area.

Mr. Dowling noted that before the applicant would begin testimony there is a question about the land behind the house.

Mr. Emery questioned the applicant if they have referred this out to legal counsel to determine what the availability is to build into a recorded easement, beside what this Board can provide them.

Mr. Jovanelly answered they have not.

Mr. Emery explained they are not to give legal advice, but the applicant has a landscape easement that is part of a recorded plan, which generally means that runs with the land and is enforceable by every other landowner that purchased land in that easement and only the courts can only provide the applicant relief from the recorded easement. Mr. Emery noted he viewed this as beyond the Zoning Hearing Board.

Mr. Sirb noted the Zoning Hearing Board is to grant or not to grant the variance and it would be up to a neighbor to go to court to dispute.

Mr. Emery explained the applicant is not asking the Board to grant a variance on the zoning ordinance, but they are asking the Board's approval to build into a recorded easement.

Mr. Jovanelly noted they have applied for storm water easements in the past and have been granted them with no mention of legal advice.

Mr. Emery commented that this is not a storm water easement, this is a specific landscape easement. He read a statement from the application that noted the specific language.

Mr. Dowling referred this to the solicitor.

Mr. Hull read section 203.311.H(3). Mr. Hull questioned Ms. Zerbe on the interpretation of the ordinance.

Ms. Zerbe explained the 30-foot guideline may have been pulled from old language for buffers, but noted it is not clear where it was pulled from.

Mr. Hull explained these are two different items; and one that is proper before this board is whether what they are proposing is still appropriately filters views of the housing that is less dense. He continued that he does agree that there probably is a separate issue to the recorded buffer easement, but he does not feel they are the

same thing. He noted this is a very subjective provision as to what they are proposing will still provide an appropriate filter. He noted that is the question that is before the Board today.

Mr. Sirb questioned the applicant if he has checked with the HOA?

Mr. Duryea answered he has, and they do not have a problem with it. He explained once the variance is granted, he is to give a copy of the approval to the HOA.

Mr. Sirb questioned Ms. Zerbe if she had received communication from the neighbors.

Ms. Zerbe answered that she did not receive any communication from the neighbors but had spoken with the developer and the HOA does not have an issue.

Mr. Dowling noted he thought court approval would be needed to invade an easement.

Mr. Tucker explained that when there is a court approval easement, whoever benefits by the easement would have to agree to modify the restrictions, they would be the ones to challenge it.

Mr. Sirb questioned Mr. Tucker if they mean the other neighbors.

Mr. Tucker answered yes.

Ms. Zerbe commented there are other accessory uses in that easement at other homes.

Mr. Hansen noted he felt this would be an issue between the homeowner and the HOA.

Mr. Sirb questioned the applicant if he has anything in writing that what is presented is allowed.

Mr. Duryea answered he has an email from the President from the HOA.

Mr. Hull recommended the Board review the application to whether they approve what the applicant is proposing still provides an appropriate filter. He noted the other issues that have been raised are private property disputes that may not exist.

Mr. Dowling requested the applicant to begin his testimony.

Mr. Jovanelly explained the proposed pool project to include a pool, patio, and fencing to the board and the unique challenge of the width of the lot, with no backyard that has a 30-foot landscaping buffer. He explained the conditions created the hardship.

Mr. Dowling questioned the dimensions of the lot.

Mr. Jovanelly answered the rear is 200 feet wide and the depth is 124 feet. He explained where they are proposing the project the depth is about 100 feet deep.

Mr. Dowling requested the applicant to describe the current buffer.

Mr. Jovanelly answered it is a heavily wooded downhill slope.

Mr. Sirb questioned the fencing.

Mr. Duryea noted the fence would have to be approved by the HOA.

Mr. Sirb questioned how many homes have pools in the development.

Mr. Duryea answered five or six.

Mr. Sirb questioned Mr. Duryea if he has spoken with his neighbors personally.

Mr. Duryea answered yes and explained they had been on the waitlist for a pool for two years.

Mr. Jovanelly noted they follow all other regulations, and the project would impact the neighborhood negatively.

Mr. Dowling asked if there were any other questions by the Board.

No response was heard.

Mr. Dowling questioned if the Township has a position.

Ms. Zerbe answered no.

Mr. Dowling questioned if any member of the Board wishes to action on Docket 1464.

Mr. Sirb questioned Ms. Zerbe on the name of the ordinance.

Ms. Zerbe answered it is the open space development ordinance.

Mr. Sirb motioned to approve Docket 1464 as submitted under the open space development ordinance.

Mr. Hansen seconded the motion.

Mr. Dowling noted that the motion there is understanding this subject would not affect the legality of any issues regarding the easement.

Mr. Sirb noted he would accept that as part of his motion.

Mr. Dowling requested Mr. Hull for a roll call vote. Mr. Murphy, Aye; Mr. Hansen, Aye; Mr. Sirb, Aye; Mr. Emery, No; Mr. Dowling, Aye.

Mr. Dowling noted the motion was approved.

The meeting ended at 7:25 p.m.

Respectfully Submitted,

*Kristi Focht*

Kristi Focht, Recording Secretary