

Lower Paxton Township
Zoning Hearing Board

August 24, 2023

Members Present:

Allan Hansen

Jeff Staub

Greg Sirb

Mark Emery

Joe Murphy

Ron Reeder

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

Appeal 23-02

Applicant: Linda Miller

Address: 4033 Linglestown Road

Property Owner: Blue Mountain Corp Ctr, LLC

Property: 4033 Linglestown Road

For: An appeal of the Zoning Officer decision that the owner of 4033 Linglestown Road 1.) May construct a second building on the property in accordance with the 2008 recorded plan without additional land development approval. 2.) The owner of the property is not required to obtain variances to develop the property with a 20' setback from the adjoining residential property without a buffer yard.

The Hearing Began at 6:24 p.m.

Mr. Hansen swore in Amanda Zerbe, Community Development Director.

Mr. Hansen questioned Ms. Zerbe about the issue.

Ms. Zerbe answered an appeal of the Zoning Officer decision that the owner of 4033 Linglestown Road 1.) May construct a second building on the property in accordance with the 2008 recorded plan without additional land development approval. 2.) The owner of the property is not required to obtain variances to develop the property with a 20' setback from the adjoining residential property without a buffer yard.

Mr. Hansen questioned Ms. Zerbe is the appropriate fees had been paid and if they were properly advertised.

Ms. Zerbe answered that the fees were paid on July 7, 2023. The property was posted on August 11, 2023. The hearing was advertised on Penn Live on August 3, 2023, and August 10, 2023, and mailings for the public hearing were mailed on August 9, 2023.

Mr. Tucker noted that the Board wanted to raise the party's prospective positions, noting that there are two lawyers on the Board, and they feel there are legal issues. Mr. Tucker noted that the appellate applicant did submit a memorandum that was received by Mr. Hull this afternoon and has not been shared with the Board. Mr. Hull noted it may be beneficial to hear from all three parties before taking factual testimony.

Mr. Hume introduced himself as the attorney for the Appellant. He questioned if Mr. Hull is requesting that the Board not hear testimony this evening; and this meeting be a briefing.

Mr. Hull answered that is correct and explained that this evening would give the Township and landowner an understanding of any legal issues.

Mr. Hume noted his concerns with the request of the Board. The first concern is that his client will not be available for a time after tonight's hearing and noted the applicant's daughter is here from Tennessee for tonight's meeting and that creates a hardship. He continued to his second concern which is the number of factual issues for the case. Mr. Hume stated that it would benefit the Board that whatever briefing is presented, they address each issue as presented.

Mr. Hull noted Mr. Hume's comment and questioned if there was any response from the other parties.

Ms. Gimmel introduced herself as the council for the Blue Mountain Corp CTR LLC, who is the owner of the property which is the subject of this appeal. She requested to be granted party status for this matter.

Mr. Hull answered yes.

Ms. Gimmel noted the issue that is being raised here is a jurisdictional issue and she does not believe that the Zoning Hearing Board has jurisdiction to hear this matter. Ms. Gimmel stated that the applicant has filed an appeal of the Zoning Officer determination of a plan and there has been no such decision by the Zoning Officer. She continued that before the Board hears facts or testimony, the preliminary issue of whether or not the Zoning Hearing Board has jurisdiction over the issue must be determined. If the case is made that the Zoning Hearing Board does not have jurisdiction over this matter, then they cannot have a hearing. She requested to review the memorandum that was submitted by Mr. Hume and to continue this matter so they can review and submit briefs to the Board so a decision can be made on whether you should proceed with testimony.

Mr. Stine noted he concurred with Ms. Gimmel.

Mr. Sirb agreed with Ms. Gimmel and Mr. Stine that the jurisdictional issue needs to be resolved first. He questioned the procedure to have that done.

Mr. Hull noted that due to the conversations being raised, the Board is inclined to address the jurisdictional issues first from a legal perspective before undertaking an evidentiary hearing. He explained the landowner would have the opportunity to brief those issues and then the appellant and township would have the opportunity to respond. Following the receipt of the briefs, we would reconvene to hear legal argument on those issues at which time the Board would be able to evaluate jurisdictional issues. Mr. Hull requested input from the applicant with a timeframe and noted they will accommodate Ms. Miller with remote testimony.

Mr. Hume asked for confirmation that the landowner is making a motion about jurisdiction.

Mr. Hull confirmed.

Mr. Hume noted that in July a copy of the appeal was sent to Ms. Gimmel's partner, and this is the first time they have heard of jurisdictional issues. He noted this issue should have been raised earlier to be addressed.

Mr. Sirb noted that this is an issue that needs to be resolved.

Mr. Hume noted he respects that and noted this is a unique issue.

Ms. Gimmel noted that it was not intended to inconvenience anyone in any way. Ms. Gimmel noted that they would work on a time frame to be prepared for the next meeting.

Mr. Hull questioned when Ms. Miller would next be available.

Ms. Miller answered October.

Mr. Hull noted this would be scheduled for the October meeting. Mr. Hull questioned Ms. Gimmel on her timeframe.

Ms. Gimmel answered three weeks from today for her brief.

Mr. Hull explained that Ms. Gimmel would have three weeks and then the applicant would have three weeks from the response of Ms. Gimmel. Mr. Hull questioned Mr. Stine on the timeframe.

Mr. Stine noted that would be fine and questioned when the meeting in October would be held.

Mr. Zerbe answered October 26, 2023.

Mr. Hull noted for the record the meeting would be held October 26th at 6:00 p.m.

Mr. Sirb questioned if this hearing would be for the jurisdictional issue.

Mr. Hull explained that the Board would have the opportunity to rule on the jurisdictional issue but also to be prepared to present any additional factual testimony.

Mr. Sirb noted that this is a convoluted issue and requested the parties' briefs to include where they agree and where there are in disagreement to make it easier for the Board.

Mr. Hume requested that the Township hold any permits for the site pending the next hearing.

Ms. Gimmel responded with her arguments regarding the release of the permits.

Mr. Sirb noted that he is not comfortable with moving forward with a hearing if it would create an additional legal issue. He noted he would like the jurisdictional issue resolved before a permit is issued for construction of the building.

Ms. Gimmel requested once the permits are submitted, Ms. Zerbe expeditiously turn the permits around.

Ms. Zerbe responded that the permits are being held and will be ready for release the next day.

Mr. Hansen questioned if any member of the Board wished to make a motion.

Mr. Sirb motioned to continue this meeting to the October meeting.

Mr. Emery seconded the motion.

Mr. Hull requested a voice vote and a unanimous voice vote followed to move the meeting to October.

Motion passed.

This hearing ended at 6:43 p.m.

Respectfully Submitted,

Kristi Focht

Kristi Focht, Recording Secretary

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Special Exception 23-03

Applicant: Aghaby Rentals LLC

Address: 4205 Valley View Road

Property Owner: Aghaby Rentals

Property: 4229 Elmerton Ave

For: A special exception to allow a conversion of an existing building to result in an increased number of dwelling units in the Commercial General (CG) zoning district.

Fees Paid: August 1, 2023

Property Posted: August 11, 2023

Advertised: August 3, 2023, and August 10, 2023

The Hearing Began at 6:00 p.m.

Mr. Hansen opened the Zoning Hearing Board noting the Board would enter a brief executive session.

The meeting resumed at 6:16 p.m.

Mr. Hansen noted that the Board will table Appeal 23-03 due to the information provided to the Board does not meet the requirements.

Mr. Tucker questioned the audience that is in attendance who wished to be heard on this matter.

Mr. Hansen swore in Deb Shaub of 4226 Elmerton Avenue.

Ms. Shaub noted the applicant does not have an objection to the apartments but to the lack of maintenance to the car lot and that it is an eyesore to the area. She noted the applicant mowed down the zoning hearing notice and does not clean up the trash on the properties. Ms. Shaub noted the trees that have been cut down on the applicant's property and now the lights from the car lot shine right into the neighbor's property.

Mr. Hansen swore in Patricia Gustin Yanich of 4225 Elmerton Avenue.

Ms. Gustin Yanich noted that her property abuts against the car lot property. She explained that almost a year ago she was notified that all the trees on the car lot property were being cut down and then bright lights were placed on the lot. She explained that her once quiet property now has lights shining in her windows all night long and she can hear Route 22. She explained that she has contacted the Township and worked with Mr. Gehret. She explained there is now high grass and garbage all over the property. She continued that the surrounding neighbors do not feel that they can trust this neighbor to respect the neighborhood. She noted she is not pleased that now the applicant is requesting to build more apartments.

Ms. Shaub also noted the increased traffic on Colonial Road and the difficulty to exit Elmerton Avenue.

Mr. Hull noted he felt this testimony to be important as they will continue this hearing to a future date.

Mr. Sirb noted that the proper documentation was not provided and what was is elementary at best.

Mr. Hansen questioned if there were any comments by members of the Board.

No response was heard.

Mr. Hansen requested a voice vote to table Appeal 23-03.

A unanimous voice vote followed, and Appeal 23-03 will be tabled.

This hearing ended at 6:16 p.m.

Respectfully Submitted,

Kristi Focht

Kristi Focht, Recording Secretary