

Minutes for Planning Commission Meeting, August 23, 2016

The meeting was called at 7:45. Present were Duval, McNeill, Cole, Aherne, Casola and Dotti. Bickford arrived at 7:51.

The Commission considered a recommendation for a variance:

Marilyn Tjaden, Beaver Run Road, Ottsville, PA, TMP #44-005-064 Request variance from Article VIII, Section 806(e)(5), that requires septic absorption areas must be setback at least 150 feet from the top of a bank of any waterway within the Tincicum Creek Watershed Overlay District to permit the septic absorption area to be setback 63.3 feet from the top of bank of the Tincicum Creek.

Representing Marilyn Tjaden was Bill Brenner, attorney, who asserted:

- The application was a textbook case for hardship.
- The applicant purchased the 6.39 acre parcel in 1995, before the present Overlay and Sewage Management ordinances, along with 2 other lots across Beaver Run Road.
- The primary septic field was located within 63 feet of the Beaver Run, which stream was ephemeral and not Exceptional Value.

The Planning Commission disputed that the Beaver Run was not Exceptional Value, citing the Comprehensive Plan.

Joseph Valentine of VW Consultants, PSMA Certified Inspector and Sewage Enforcement Officer, referred to a "Sewage System Design Plan" he prepared, dated 3/17/2016. This plan did not give test pit information or location. He asserted:

- That for this septic system a permit had been received by the County Board of Health
- For the primary septic, an "at grade" system was proposed, actually 2 feet above grade, 1 foot of stone and 1 foot of cover; the effluent being pre-treated by filtering through coconut husks, which is a proprietary system called "Ecoflow". This type of filter does require maintenance by replacement. The 1500-gallon septic tank could accommodate a residence of at least 4 bedrooms.
- The replacement septic field is located outside the setback in the south corner of the property near the corner with Clay Ridge Road. This field is split into 2 beds. The larger of the split beds is likely to be at least 150 feet from the top of bank of the Beaver Run.
- Other areas outside the setback were not suitable for sewage treatment because of steep slopes or rock outcroppings.
- Even though it was further from the Creek, the replacement field was not chosen as primary because the smaller split bed was still within 150 feet of the Creek, and also because of the expense involved to pipe effluent to this location.
- He did not perform a wetlands analysis, but he referred to an Urweiler and Walter plan dated 9/2/2008, which showed no wetlands in the areas proposed for sewage treatment.

- This same Urweiler plan also indicated perc testing suitable for an “at grade” septic field in a location inside the setback in the south corner of the property.
- This location was not chosen because, since a septic system is a structure, a variance would have been required.
- No information was obtained about the location of the 100-year floodplain of the Beaver Run.
- No information was provided about other Overlay Districts that might apply to the property.

The Planning Commission discussed and considered:

- The Riparian Corridor Overlay for the Beaver Run needs to be considered, and the proposed primary septic system, along with the sketch of the residence location, intrudes within 75 feet of this Corridor.
- The applicant has disclosed that there are two locations suitable for sewage treatment outside the 150-foot limit to the Creek: first, the larger bed of the split field, and second, the location within the setback.
- The “minimum variance that will afford relief” need not always be a primary residence. From Ordinance 188, Sewage Management: “There are lots within Tinicum Township that do not support full-time residential uses such as camps, cabins, or other seasonal part-time occupation due to unsuitable or marginal soil conditions. The Township will permit a privy or chemical toilet as a new or replacement system for the continuation of such seasonal part-time occupation of a lot”.
- The “minimum variance”, even if a full-time residence, does not need to be a residence of 4 bedrooms.
- A suitable location exists for the location for the primary septic field: the larger bed of the split field, for however many bedrooms this field can accommodate.
- A suitable location for the replacement field, which would require a bulk variance, is the site found by Urweiler inside the setback. This location is more suitable for replacement than the site 63 feet from the Creek because protection of water quality is of more importance than the visual impact of an “at grade” system. Referring to Section 122 of Ordinance 188: “The main objectives [of this ordinance] are to provide for adequate sewage treatment, while at the same time protecting surface and groundwater quality and quantity. The preservation of water resources is an essential element of the Township’s Comprehensive Plan...”

Aherne, Casola and McNeill considered that the site conditions on the lot-- such as the Riparian Corridor, slopes and rock outcroppings-- presented challenges for the proposal of a residential use, and that Commission should be given more information to make a comprehensive planning judgement about whether a residence on this lot is appropriate. The rest of the Commission agreed except for Dotti, who said that he was unsure without legal advice if we should restrict our inquiry to just the narrow variance, or if, as with subdivisions or land development, we could consider more comprehensive planning. Attorney Benner stated that this variance request stood by itself, and does not presuppose what happens in the future.

Aherne questioned the origin and legitimacy of 44-005-064 as a true subdivided lot. He stated that it does not signify that a separate lot has been created, just because a lot and block number has been received by the County, and that in fact this lot perhaps should be considered merged with its two sibling lots. Benner interjected that it is recognized law that a lot with its own lot and block number, separated by road from other lots, is in fact a separate lot. Benner said further that if the 1969 subdivision did in fact create this separate lot, then the question is settled.

The Commission reviewed Requirements and Standards for variance at 1405 (c), considering :

1. Yes, there exist unique circumstances relating to siting of a replacement field in the setback, but hardship has not been demonstrated for the siting of the primary septic area.
2. Does not apply, because without granting relief the lot can be developed in conformity with the Zoning Ordinance
3. Does apply; hardship has not been created by the applicant.
4. Does not apply, given intrusion in the Tincum Creek Overlay and Riparian Corridor.
5. Does not apply; the proposal does not represent the "minimum variance".

Casola moved to recommend against the variance, in that:

1. A question remains about whether 44-005-064 is in fact a separate lot.
2. Hardship has not been demonstrated: the larger bed of the split field is a possible conforming location for a primary septic area.
3. The application is not the "minimum variance" because there exists a possible location for the replacement field in the setback, which does not violate one of the "main objectives" of Ordinance 188, the protection of water quality. Further, the Zoning Ordinance gives alternate uses for this lot that would constitute a true "minimum variance".
4. This is a problematic site is for the future development of a residence.

Bickford seconded. All were in favor.

All agreed that the Solicitor and Engineer should present the Township's case at Zoning Hearing Board.

Bickford moved to approve the July 26 minutes, provided that Rich O'Brien be identified as the Zoning Officer,. Casola seconded. All in favor, except Aherne and McNeill, who abstained.

Bickford moved to approve the January 26, 2016 minutes as written. Casola seconded. All in favor.

Aherne proposed the next work session should discuss administrative procedures relating to the Planning Commission.

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Motion by Bickford, seconded by Casola, to adjourn meeting at 9:47. All in favor.

Minutes submitted by Dotti.