

Borough of Pine Hill
Meeting
Planning and Zoning Board of Adjustments
June 8, 2017

Call to order: **Call to Order by Mr. Kevin Waddington 7:39 pm**

Pledge of the Flag: **Led by Kevin Waddington**

Sunshine Law: This is a regularly scheduled meeting of the Pine Hill Planning and Zoning Board. This meeting has been duly advertised and is in full compliance with the Sunshine Law.

Roll Call: **Present:** Mr. Waddington, Mr. Castor, Mr. Ford, Mr. Hagy, Mayor Green, Councilman Robb, Mrs. Ciotto, Mr. Green, Mrs. Jones, Mrs. Gilson
Absent: Mr. James,
Professionals: Solicitor: Mr. Sitzler, Planner: Mr. Luste

Correspondence: **None**

Resolution 2017-9 **Mr. Waddington:** The first thing on the agenda is Resolution 2017-9 which is approval for Paul and Megan Kergides for the setback variance for an addition. If everyone has had a chance to read the resolution I will entertain a motion for approval!

Mr. Hagy: I move to approve

Mrs. Ciotto: Second

Roll Call: Mr. Castor and Mayor Green abstained from motion all others "aye" motion carried

Resolution 2017-10

Mr. Waddington: Next we have Resolution 2017-10 for Carl Pursell for Preliminary and Final Major Site Plan and Minor Subdivision on Cross Keys Road. If you had a chance to review I will entertain a motion for approval!

Mr. Ford: I make a motion

Mr. Waddington: We have a motion is there a second?

Mr. Hagy: Second

Roll Call: Mr. Castor, Mayor Green and Councilman Robb abstained from the motion all others “aye” motion carried

Mayor Green: I had to abstain because I could not sit for this hearing but I stand in favor I whole lee support this project

Approval of Minutes:

Mr. Waddington: If everyone has had the chance to read the minutes from May 11th, 2017 meeting I will entertain a motion for approval

Mr. Hagy: Move to approve

Mr. Waddington: Having a motion do I have a second?

Mr. Ford: Second

Mr. Waddington: I have a second all in favor?

Mr. Castor, Councilman Robb and Mayor abstained on minutes all others “aye” motion carried

Old Business:

Mr. Waddington: Motion approved. Does anybody have anything under old business? Hearing none

New Business:

Waddington: New Business the meeting will next month July 13th at 7:30pm

Open Floor to the Public:

Mr. Waddington: At this time I will entertain a motion to open the floor to the public

Mr. Castor: so moved; seconded by Mr. Ford

Mr. Waddington: At this time the floor is open to the public. Seeing none I will entertain a motion to close

Close Floor to the Public:

Mr. Castor: So moved

Mr. Ciotto: second

Mr. Waddington: Mayor you have something

Mayor Green: Yes I do. Just for the boards understanding the Village of Little Mill a section where Mill Stream is one of the streets I forget the other street that backs up to it; but they are town homes and part of the approval 20-25 years ago whenever that project was approved. Between the residential homes there is a 15 foot emergency easement for emergency vehicles in case of an emergency. The property is owned by the individual townhome owners but there is a 15 foot easement in the case of an emergency the emergency vehicles could get back there. The Zoning Office sited probably 10 residents out of probably 30 or 40 who have encroached their fence onto the easement and in some cases they are neighbor to neighbor so you can't get through there. Other people have kept their fences only to the easement line which is what they were supposed to do. Now in some cases they did this without approval and in some cases they said they called up here and they were told they didn't need approval because you don't need approval to construct a fence; you don't need a permit but you do need a letter from the Zoning Official. In other cases years ago the former Zoning Official told them they could in fact construct this fence which was wrong information; so they got letters that told them that they have to take down their fences and move them back and one case a gentleman constructed a shed without approvals in the easement and put a satellite TV dish on the shed so he may be appealing to the board. The Fire Chief is in the process of writing a letter right now and if the letter says he doesn't need the easement and unlike a utility easement which typically you can construct a fence on because they would know in advance that they would have to take it down if the utilities had to get in there and they would know weeks or months in advance because it would be a non-emergency; but at 2:30 in the morning because of a fire in the middle of the unit and they

have to get back there is no way they can take down 15 or 20 fences and fight the fire. So the board may very well be seeing some applications from people wanting to appeal that decision and we will go from there but I don't think it is the end of it.

Mr. Sitzler: It would be for the Zoning Board only the Zoning Board would hear this type of appeal it is just an interpretation it is not a use violation. If that is going Les and Mayor I think we need to pull the approval, for those complexes to see what the resolution says about the emergency access and make sure it is part of the requirement too. I don't know who wants to pull deeds but it is probably on the deed

Mayor Green: The Zoning Official met with the property management company and he was flat out told it is on the deeds

Mr. Sitzler: Yes as long as their deed says that is an emergency access they are going to have a tough time. The problematic one is where the prior municipal official may have improperly told them or given them a permit; however as I mentioned in the "Chee case" if you make a mistake the town doesn't have to whatever the mistake is but it is a tough pill to swallow for someone if they were given a permit and now they have to move the fence back because somebody years ago gave them erroneous advice, we are going to have separate hearings for each one. It can tie the board up depending on how many people appeal but to be ready for this I think we need to get the resolutions and make sure we know; and also Mayor usually when these things are done the municipal land use law requires that just like a paper street it is supposed to be on our map so if this is an emergency access we should be able to pull up an official map and see where they are at so we can show them see look at the official map that is an emergency access in addition to your easement that is there.

Mr. Luste: It should be on the approved drawings

Mr. Sitzler: Yes; it should be in the approved drawings that is why I said we need to see the application and resolutions whatever is available. How many years ago would you say Mayor

Mayor Green: Those places have been there probably 20 years the approval was 25 to 40 years old because the original complex this is really the village of Bromley and these phases were approved years and years ago so I'm talking 20 years at least I never sat in on any of them.

Mr. Sitzler: Usually what happens because this is not an uncommon situation but it does almost create sort of a Pandora's Box when this happens there are a lot of people. Towns have had paper streets where they don't do nothing with and usually the only people who remember paper streets are the original owners and when people go to closings and you are the third and fourth owner you don't necessarily get told that you have a paper street in your back and you can't put anything on it and sometimes they put plants out there or shrubs because their deed looks like they own all of it as far as they know.

Mr. Luste: On tax maps there is usually do show paper streets but I don't think it is a requirement to show an easement particularly emergency easements but they should be on the official drawing which what about 20 to 25 years old. And that should be at the clerk's office.

Mr. Sitzler: That is why it is important we have all that information because to make a decision we need to have as much background information as possible; so I'm just bringing that up

Mr. Waddington: So would that be between Forrester and Grist Mill where those townhomes back up?

Mayor Green: The one I saw was Mill Steam so it is Mill Stream and

Mr. Green: Probably Players

Mayor Green: Well it is just one section and a lot of people have not put up fences and or if they have they have not encroached on this area but the ones that have in fact in one case they are back to back and they are at the end where there is no way to get fire equipment in there

Mr. Sitzler: We will have to judge each case separately and individually but the concept is that is only takes one person to block it especially if there is one at each end and there is an area in between there where the emergency vehicles can't get to it becomes a legal concept to grant an exemption to someone in this type of situation

Mayor Green: We reached out to the Fire Chief as an official for a letter and I would expect that the letter will state that they need that area because quite frankly if a fire breaks out in the middle of the row there is no way to get to the back without going thru adjoining peoples living rooms to get back there

Mr. Sitzler: I guess that just gives the board on what to expect. I think we need to be prepared that is why I said we need to get all the background information so the Zoning Board can speak with some background information on this other than just what do we do with this now; especially when people may have been erroneously told that they could; again even in the Chee case we heard that testimony where it was very unclear to me how on how correct that information was in terms of whether it was just wrong or just misinterpreted because sometimes information is just misinterpreted. What someone may be asking for "A" and the Zoning Official may have heard B and he said if it is "B" you can do it and they are asking for "A" something a little bit different.

Mayor Green: In this case as opposed to a typical utility easement under those guide lines as opposed to emergency access

Mr. Hagy: The Association is well defined on maps or

Mayor Green: My understanding is that every one of the deeds has it on there so the people knew and this all came about because the Zoning Official got an anonymous letter saying that people had encroached on the easements. And moving forward what were we going to do about it? So my guess is someone wanted to extend their fence all the way out of has no fence at all; otherwise we would not have known about it we were not out there just measuring fences and we went out and spoke with the property management company who wasn't much help as far as enforcing the code but said yes absolutely there is an emergency access easement there. So they are well aware that it is there

Mr. Sitzler: Are they just common areas that original the original grant holder still owns or is this all separate thru the townhouses that everyone is responsible for their own

Mayor Green: Well I guess they cut the grass or at least some of the grass because when I asked the question about cutting the grass they must in those areas where there isn't fencing they must cut the grass and the grass is being cut

Mr. Sitzler: Well there is a chance where depending on what the association by-laws say about that it could be in there if they cut the grass and they are supposed to; the association is supposed to I assume maintain the emergency access since that came from the original grantor of all the properties I don't know

Mayor Green: This management company has only been there; from what I understand there has been multiple management companies

Mr. Sitzler: They are bound by the original guide lines; it passes down they inherited it so where they know about it. Depending on how extensive their by-laws are or what their duties are supposed to be. That is something that did come up and was brought to my attention by Mr. Scardino

Mr. Waddington: Does anyone else have anything to say

Mrs. Jones: Question about a paper street if you have a paper street in your area who is responsible for taking care of that? Is the Borough responsible for cleaning it up and keeping it that way?

Mayor Green: No

Mrs. Jones: If it is between two homes?

Mayor Green: No because it is a paper street

Mrs. Jones: It just remains that way?

Mr. Luste: It is kind of a no man's land

Mayor Green: Unless it is improved it is not on the Borough

Mr. Luste: Again people sell houses and people sell houses and they do not get the property surveyed and all of a sudden they are going to put a shed out there

Mayor Green: It makes sense if the Borough had vacated it but we haven't vacated something out there

Mr. Sitzler: That happens in big cities with city alleys; if there is anything worse than streets it is alleys because sometimes you can't go far enough back in the city to see who owns the alley. Am I correct on that Joe?

Mr. Luste: Yes

Mr. Sitzler: It creates a real legal quagmire. Who wants to spend all that money litigating in court on who owns or who is responsible for an alley way?

Mr. Castor: Everybody wants it till they have to repair it

Mr. Sitzler: Going back in history like the last one we could not find the original resolution we had to go with the second; it is going to be a little difficult for us

Mayor Green: We had to attempt to vacate streets in the past and got a lot of grief over it because somebody didn't want it that is the way it goes

Mr. Sitzler: They didn't want to maintain it

Mr. Castor: Well their tax bill is going to go up too once they take ownership

Mayor Green: Yes it is going to increase somewhat but not a lot

Mr. Hagy: I would think too in case of an emergency where you had to get to a home in case of a fire is there anything on record that can be updated easement the way it was intended to be

Mr. Sitzler: The one thing these people have to realize they may be upset especially the ones that were told years ago they can go ahead and put a fence up. What they have to realize if there is an emergency there and somebody dies or a house burns because emergency service can't get back there because of their fence; they are going to have a huge legal problem. Number 1 the insurance is not going to cover it once they find out they put up an illegal structure blocking it and the homeowners insurance will not protect you. They have to understand the liability situation they are making is bigger than moving the fence back.

Mayor Green: We already sent them a letter and told them they have 60 days and some of them came back and said well how do I appeal it. Once we finalize with the Fire Chief and I think again and I'm not putting words in his mouth but I would say chances are he says he has to have that and at that point we are going to tell them and at that point they are going to move it or come in screaming at me and that is okay. Or they are going to come in here and file an application here with the Planning Board so I expect we are going to see some

Mr. Sitzler: If they are saying they just need more time to do it then I would say you can them more time to do it

Mayor Green: Again typically with something like this we give them a 10 day notice and we are already looking at 60 days and that was about a month ago. If they tell us they need a few more days that is fine but if think we are going to go away they are going to forget about it

Mr. Sitzler: Yes if they are making a good faith effort and can give a good reason

Mayor Green: And if the Fire Chief comes back and says they don't need it then we are probably going to take it to council and vacate the property. Again I fully expect the Fire Chief with good reason that I can't get back thereto the house there is just no way around it

Mr. Sitzler: Do they have a Homeowners Association

Mayor Green: They do but it is a typical condominium little activity by the homeowners association where they do not enforce anything, half of them don't pay

Mr. Sitzler: I really don't care how much they enforce this is considered a common area, emergency easement in the association

Mayor Green: I really don't know if it is a common area in a sense because they each own the property back to back but they have this easement in it

Mr. Sitzler: Do they cut their own grass

Mayor Green: I don't know that but I know the area that we are talking about has been cut in fact even that day it was all cut the same length so it wasn't like one cut it then another cut the same length. The association at least must cut the front yards because there is not a lot there and they are probably are some common areas that they do. Obvious where there is a fence whether or not it is compliance or not in compliance where there is a fence in the back and they are not cutting the back yards and things like that there are other houses or townhouses in this development other than on this one street they do some work they rake the leaves up in the fall they put them in one spot and we come around and pick them up. That was my question are these people maintaining then what happens would there be tall

trees there, there is nothing back there so someone is maintaining it and I would gather with the conversation I had with the association if they can get to it they will cut it.

Mr. Sitzler: If their association has responsibility for what is the emergency access easement then they have responsibility or should have had the responsibility to tell these people they can't do it. So it won't be just us telling them they can't do it

Mayor Green: Yea I don't think the association will be telling them either

Mr. Sitzler: They should, pragmatically they may not but legally I think they are obligated to tell them if that is the case

Motion to Adjourn:

Mr. Waddington: If nobody has anything else I will entertain a motion to adjourn

Mr. Ford: Make a motion to adjourn

Mr. Hagy: second

Mr. Waddington: All in favor? All "aye" motion carried