

MINUTES FOR THE REGULAR MEETING OF THE CHESTER TOWNSHIP BOARD OF ZONING APPEALS HELD MONDAY, NOVEMBER 13, 2023, IN THE TOWN HALL MEETING ROOM. AUDIO RECORDING ON FILE.

Chairman Barton Ziganti called the November 13, 2023, Chester Township Board of Zoning Appeals meeting to order at 7:02 pm.

Roll Call

Members present: Ms. Denamen (alternate), Ms. Fadorsen, Ms. Klemm, Ms. Muehling, Ms. Sritalapat, Mr. Ziganti

Members absent: None

Admin present: Ms. McCarthy

Zoning Inspector: Mr. Purchase

Mr. Ziganti led the Board members and audience in reciting the Pledge of Allegiance. He also read the public hearing process of the Board of Zoning Appeals.

**Appeal Z-2023-10
Barry and Gloria Leven
9501 Sherman Road
Parcel #: 11-140000 (9499 Sherman Rd) and 11-194400 (9501 Sherman Rd)**

Chairman Ziganti also requested all those present sign in at the lectern with their name and address. He then swore in all persons who may present at this hearing.

The Admin read Appeal Z-2023-10 into the record.

The Zoning Inspector gave a brief description of the variance being requested. This is an Area Variance, but not for purposes of a structure. Mr. Leven and his wife, own two parcels of land. They reside on one parcel at ~~9501~~ 9499 Sherman Road that doesn't have frontage onto Sherman. The other lot that he owns, has frontage on Sherman that is a pre-existing, non-conforming legal lot. It is ~~2.47~~ 2.97 acres. The prior owner actually owned the portion that is in question here today which is a ½ acre. About the 1980's, those two parcels were consolidated and that made 2.97 acres. Still – non-conforming. This isn't really about Mr. Leven's current lot. He has five acres. What he desires to do is take this .52 acre from ~~9499~~ 9501 Sherman Rd and consolidate it to his property at ~~9501~~ 9499 Sherman Road.

Mr. Leven was invited to make his presentation, which follows.

Mr. Leven told the Board about why he and his wife chose Chester Township to be their home over 40 years ago. We chose Chester because of the abundance of nature within. They raised two children here. He described their childhood and current professions. We are requesting that .52 acres from our non-conforming lot be deeded over to our present lot to preserve nature, protect our view and our privacy.

We didn't realize it at the time, the prior property owner, Margie Lind had planned for us to get this lot. It is our belief that sometimes general rules do not fit every situation and sometimes need to be amended. Of course, that is why we are here this evening.

Exhibit A was shown on monitor displaying both properties which are in the R5A District.

Exhibit B showed the two properties showing the original drive on the right went to their house and was used until 1961.

Exhibit D showed both parcels original owned by Helen Eichorn Zare. She sold the right side of the right property to AJ Dorn in 1956. In 1961, Patrick and Margie Lind purchased the property on the left which was actually 1.35 acres. In 1984, the 1.62 acre property on the right was sold to the Lind's.

Exhibit E – after Margie's husband passed away in 2000, Gloria and I started helping Margie who was now a widow with no family. We wanted to make her life easier to manage so she could live her life out in the home she loved. For tax purposes, she combined the parcels in April, 2003.

Exhibit F – We took her 1.35 acre, non-conforming lot and made it less non-conforming and adding the acreage to bring it up to 2.97 acres. When she surveyed the lot in April, 2003, I believe she anticipated us adding the smaller lot because of the way the survey pins were put in.

For 40 years, Margie and Patrick encouraged their family to use this lot to witness nature. In early July, we took ownership of the Lind property.

Now we own both properties and have found out we can not make a non-conforming lot more non-conforming.

Exhibit E shows the neighborhood properties and that nine are legally non-conforming. If transferring the ½ acre is approved, there will still be four lots on this street that have less acreage than 9501 Sherman and there will still be nine non-conforming lots.

Picture 1 There is a 7-foot drop outside ~~9501~~ 9499 Sherman.

Picture 2 South east corner of 9501 Sherman.

Picture 3 Looking east

Picture 4 Going outside the porch showing a portion of the ½ acre in question.

The ½ acre we are talking about is 150' x 151' foot which is big enough to allow a new owner the ability to tear down all the trees and put up a barn. They might also clear cut the 75-year-old trees for reselling.

In the end, we would like to transfer the ½ acre flag lot to our property, and we will continue to be good stewards of the land.

Mr. Ziganti asked Mr. Leven about the vertically oriented strip of land- “Was it combined with the trapezoidal area next to it on the West?”

Mr. Leven replied it was sometime in 1980.

Mr. Ziganti referenced the four pins asking if the square of .52 acres are just surveyor pins.

Mr. Leven – correct

Mr. Ziganti – the surveying was done in 2003?

Mr. Leven – correct

Mr. Ziganti – was that Lind property at that time?

Mr. Leven – Yes. Also, that property was used as our driveway access up until 1961.

Mr. Fadorsen – So, how do you access your house now? Where is your driveway?

Mr. Leven – In 1961 a private drive was put in to get to our home and three other properties.

The Board asked to see the current drive in REALink which was displayed on the monitor.

Ms. Klemm – Was there an easement for the driveway?

Mr. Leven – It really isn't pertinent.

Mr. Ziganti explained the Duncan Factors and how it is used in deciding a variance. He asked Mr. Leven what his practical difficulty is on this property.

Mr. Leven said, it's not so much it's a practical difficulty, it has to do with preserving the environment.

Mr. Ziganti explained- “We look at practical difficulty when assessing a hardship. It is very difficult to take something non-conforming and make it less conforming. By taking

acreage away from the non-conforming lot it is now even less conforming than it was, by diminishing it by .52 acres.”

Ms. Fadorsen, addressing Mr. Leven, asked if the reason you wanted to go through is in case that lot would sell?

Mr. Leven – absolutely. We can’t move forward with anything until this issue is settled.

Mr. Ziganti opened it up to audience members.

Ms. Jackie Rusnick stated that they are neighbors and support the Leven’s request. She then read a letter from an absent neighbor who also supported this request. Mr. Ziganti informed her that only in-person testimony is accepted.

Ms. Denamen asked if zoning of the land is considered a practical difficulty?

Mr. Ziganti said no.

Ms. Denamen asked if there were any other ways besides rezoning that would allow you to preserve the natural state of that property?

Mr. Leven – yes

Ms. Muehling – confirmed that the property at ~~9499~~ 9501 Sherman is 2.97 acres.

Mr. Leven – yes

Ms. Muehling – so taking that ½ acre off would reduce it to 2.47 which would make it less conforming. You also said you had looked into other ways of doing this land split?

Mr. Leven – we know there are other ways, but there is no other way to make it ours so we can preserve it.

Ms. Muehling – As a person who has worked in Zoning, and I say this with a breaking heart – I don’t think you have a practical difficulty. I think what you want to do makes complete sense, but it doesn’t satisfy the zoning. It’s aesthetic. I just don’t think it constitutes a practical difficulty and therefore, we don’t have the right to look at it.

Mr. Ziganti said, this is an issue of non-conformity and it is an issue of a property split and it would take a non-conforming lot to be less conforming. We are allowed to look at this case, but I agree that a practical difficulty has not been shown.

Ms. Klemm referred to (Exhibit E* from the Barry Leven presentation brought that night and shown on the overhead monitor) which shows that many other lots are much smaller and reducing the property at ~~9499~~ 9501 Sherman will still leave it larger than the other smaller non-conforming lots on the street.

Ms. Fadorsen said she agreed with Ms. Klemm that it would not be detrimental to the neighborhood and there are other smaller properties.

Ms. Muehling said, the point is, if they are non-conforming lots, they were legal conforming lots at the time that they were formed. At the time that they were formed, and I'm assuming that was pre-1987, because I think 1987 is when the 5-acre district went in, they were all legal non-conforming and so was the little 2.97 parcel was a legal lot. Unfortunately, if that little half acre hadn't been split off at that point, there wouldn't be a problem. But it was. So we are faced with the spirit of the Zoning is to do away with as many non-conforming things as you possibly can so that all lots are judged by a single standard for when they were cut off. That's not going to happen with this lot. The difficulty will be that it will be made more less-conforming in 2023.

Ms. Muehling asked the Zoning Inspector, what happens to those lots if that were cut off? Are those lots given new names? Group discussion determined that there would be a parcel number change and that is when Mrs. Muehling pointed out that with the new parcel number, it will become a non-conforming lot as of 2023. That will have different standards applied to it than when it was made non-conforming in 1987. The spirit of the zoning is to **NOT** make a non-conforming lot less conforming. The problem is when you take a non-conforming lot and make it more non-conforming, it is a different kind of justification.

Mr. Ziganti said the issue right now is, where is the practical difficulty?

Ms. Muehling said, this is an aesthetic, environmental thing. It is not a setback. It is not the normal type of practical difficulty.

Ms. Klemm read section 12.8 from the Zoning Resolution, Standards for an Area Variance. (Mr. Ziganti pointed out that those are the Duncan Factors.) The other thing I am seeing here is the party shall be allowed to present their position on the evidence into the record. Ms. Klemm didn't see anything that says letters have to be read or people have to be present to accept their testimony.

Mr. Ziganti pointed out Section 12.02.04, number 2 in Section E – All testimony and evidence presented to the Board shall be given under oath or affirmation ...

It was clarified to Ms. Klemm that the letters that had been previously presented were not under oath and therefore were inadmissible.

Ms. Sritalapat said she understood the point about the law would be less conforming because the acreage would go down and how it affects the smaller parcel. When looking at the larger parcel, and how the houses are laid out, I'm having a hard time reading where the front yards are and how are they in relation to each other? As

pointed out in earlier testimony, I don't think it would harm the character of the neighborhood as there are several other parcels similar to this one. It's hard to get on board with something more non-conforming although I recognize, this is your front yard.

Mr. Ziganti confirmed with Mr. Leven that his front yard is 83 feet from the property line. He then added that Mr. Leven could put plants and trees that would have time to grow to establish live screening.

Mr. Leven said, that would mean I would have to fill in the water garden. It's like eight feet from the property line.

Ms. Fadorsen said, I think we would have a different case if there wasn't a house on that non-conforming lot already. Taking that back piece off isn't going to make another variance where the house is sitting.

Mr. Ziganti said, remember, any non-conforming lot if nothing changes right now.

Ms. Muehling talked about her three pieces of property. Several real estate people had advised her to combine the three lots to get a better price. I also talked to several attorneys who said, Absolutely Not! Sell them as three separate pieces and make it clear you won't sell them any other way. If you put them together, my original two-acre lot that I live on, and I live in a 3-acre zone, the original two acres would lose its non-conforming status. The thing I am worried about, if you cut that off and you make that less non-conforming, I think when you sell the house on the non-conforming side, you add to the 20-foot thing that makes it non-conforming. When it gets a new parcel number, things get muddled up. I just think in zoning, generally you cannot take something that is non-conforming and make it more non-conforming.

Mr. Ziganti asked for someone to make a motion to accept what is before us and grant a variance.

Ms. Klemm made a motion to approve the motion before us; Ms. Fadorsen seconded it.

Ms. Muehling asked for a restatement of what we voted on.

Mr. Ziganti reread the reason for the variance from the agenda stating that was what is before us. Discussion...

Ms. Fadorsen, said she stands by what she said earlier, it does not take away from the neighborhood. There is no detriment to the neighborhood. I just don't see a reason why not to do this.

Ms. Klemm said, considering the Duncan Factors, I'll stand by that as there are several to be considered.

Ms. Muehling discussed practical difficulty and what constitutes a practical difficulty.

Ms. Sritalapat reviewed her prior comments. The house and how it sits on the lot and how it faces the lot next to it. I see your point of view. I see how you are trying to protect the “what if”. What if someone purchases this parcel and what if they take all the trees down? You just don’t know. I think it will not hurt the character of the neighborhood.

Mr. Ziganti said he does not see any practical difficulty here. The house is located 83’ from the eastern property line which is a great distance for many houses in our township. We don’t know what will happen in the future. In the future, when the Leven’s at 9499 sell their property at that location, whose to say the new property owner may clear cut the trees that are there. Looking at the present, I don’t see the practical difficulty. I am not for doing this. Mr. Leven indicated there were other means to pursue. I don’t know what those may be. He didn’t share that with us. In the spirit of the Zoning Resolution, it is not to take something that is non-conforming and make it less conforming.

Ms. Muehling talked about the other places in the neighborhood that are non-conforming. Anything that those owners want to do will be judged by the time they were made non-conforming. If this one is cut off today, it will be judged by today’s standards – not by what it was originally. That may prove to be a difficulty.

Ms. Sritalapat asked if the house on the smaller parcel is oriented the same way as the Leven’s home.

Mr. Leven said it was the same as his home. It looks to the right.

Mr. Ziganti requested that the roll call vote be taken:

Roll Call vote:

Ms. Fadorsen/yes; Ms. Klemm/yes; Ms. Muehling/no; Ms. Sritalapat/yes; Mr. Ziganti/no

Motion was passed.

Findings of Fact for Appeal Z-2023-10

Barry and Gloria Leven requested that their property at 9501 Sherman Road be granted an area variance, reducing it by .52 acres, and consolidate it to the adjoining lot at 9499 Sherman Road. This reduces the property at ~~9499~~ 9501 Sherman Road from 2.97 acres to 2.45 acres. The .52 acres ~~adjoined~~ consolidated with the existing lot at ~~9501~~ 9499 Sherman will result in a lot size of 5.88 acres. The .52 acres being discussed is located to the southeast of the existing property line. Testimony was given that the Leven's made this request in order to preserve the natural area of the .52 acres and prevent future development. One neighbor was present to give approval to the request.

We the Board incorporate into these Findings of Fact the application forms and exhibits of the appeal including all corrections, clarifications and additions.

Ms. Fadorsen moved to approve the Findings of Fact. Ms. Sritalapat seconded the motion.

Ms. Fadorsen/yes; Ms. Klemm/yes; Ms. Muehling/yes; Ms. Sritalapat/yes; Mr. Ziganti/yes

Updates from the Zoning Inspector

Three cases coming up in the near future. One with an accessory building too close to home; another accessory building that's been built with no permits and will require a variance; and finally, one who wants to build the accessory building right alongside the house and setback is only 13'. We are meeting with Word of Grace this week trying to get their conditional permit in order. We continue to work with some other churches trying to get the timeline for regular follow up.

Announced that Richard Ivans has left the Township as Assistant Zoning Inspector and we will be speaking to a potential candidate later this week.

New Business

Mr. Ziganti asked about the numbering system used to designate Zoning Commission Amendments and the numbering system used to designate BZA appeals. Mr. Purchase will bring this to the attention of the Board of Trustees at their November 16th meeting.

Mr. Ziganti was concerned about information that was brought forward to the Board of Zoning Appeals tonight that was not previously seen or included in our individual packets. Exhibit E that was brought by the appellant tonight needs to be redesignated Exhibit E* so as to not conflict with the Exhibit E that was already in the file for this appeal.

Ms. Denamen asked about the neighbor letter presented tonight that shouldn't be considered as evidence. Mr. Purchase said that if a letter is notarized, it can be accepted.

General discussion of DRAFT minutes and the best way to incorporate any changes that need to be made in order to speed up the process.

Mr. Ziganti talked about his meeting with the Board of Trustees meeting on October 19th. He voiced his concern about the packets of information presented to the Board members for their review prior to the meeting have errors or incomplete. He is also concerned about how the Draft minutes are distributed. He would like to see the minutes more complete.

Ms. Denamen asked about what the main concern/goal is about the minutes? Mr. Ziganti responded, to make the minutes reflect what was discussed at the meeting so that the future references to the minutes will not be ambiguous?

Ms. Denamen asked if it needed to be in detail. She asked if the township has audible records.

Mr. Ziganti said that since the Township is not required to retain audible records into perpetuity, there is currently a record retention policy of only three months. If the record does not need to be kept into perpetuity, detail could be lost.

Ms. McCarthy said, currently an appellant may not appeal a variance after two years from the ruling. Also, currently audio record is being kept for BZA minutes and can go back six years in audio records.

Mr. Ziganti said that may be our practice, but not a policy. The Board of Trustees are talking about how long these records need to be kept.

The October 9, 2023 Meeting Minutes were reviewed.

Mr. Richter, who had been in attendance said the Board of Trustees minutes are compiled by our admin and then go to Patricia (Jarrett) for review. The Trustees then have the opportunity to make comments. Maybe Bart could be the first one to review initial draft minutes and then the rest could make other corrections. The Board of Zoning Appeals members agreed to this change/modification.

He also mentioned that minutes should be done according to Robert's Rules of Order. The minutes are supposed to be approved before the rest of the meeting starts.

It was decided that Mr. Ziganti will review the initial draft of the minutes and once his changes are incorporated, the remainder of the Board will do their suggested changes.

Discussion occurred if approval of minutes should happen at the beginning of the meeting per Robert's Rules of Order. Mr. Ziganti is not in support of this action because it will subject the residents to unfair wait time.

Review of October 9, 2023 Meeting Minutes

Ms. Klemm moved approval of the October 9, 2023 meeting minutes as amended; Ms. Muehling seconded.

Vote: Ms. Fadorsen/absent; Ms. Klemm/yes; Ms. Muehling/yes; Ms. Sritalapat/yes; Mr. Ziganti/yes

Motion passed.

Additional New Business

Ms. Pat Mula voiced her concern over the vote on the variance request heard tonight. She also asked for a copy of the agenda which had been posted on the front window.

Ms. McCarthy passed out a proposed change to the order of the meeting following Robert's Rules.

Also passed out was a picture and minutes highlighting the Findings of Fact from a 2021-17 BZA case. It involved a resident complaint about a dead tree which was where there was supposed to be live screening. The other problem is the placement of the live screening and a more specific definition. Mr. Ziganti asked if it should be addressed at the next meeting.

Updated Zoning Resolution reflecting the recently approved amendment for Supplementary Variances was distributed.

Meeting was closed at 9:40 p.m.

SECRETARY'S NOTE: These minutes were amended on December 19, 2023 to indicate the correct address of the property the owner lives on (9499 Sherman Road) and the variance property being reduced by .52 acres (9501 Sherman Road) in the Findings of Fact. Corrected address's are shown in a red font.

Approval Date January 8, 2024

Kathleen McCarthy, Admin. Assistant

Barton Ziganti, Chairman