

**NORTH FAYETTE TOWNSHIP  
ZONING HEARING BOARD**

**THURSDAY, APRIL 28, 2022  
7:00 P.M.**

The meeting was called to order by Solicitor, Anthony Cosgrove.

**MEMBERS PRESENT:**

Brant Miller, Chairman  
Dan Patterson, Vice Chairman  
John Scott, Member  
Anthony Cosgrove, Esq., Solicitor  
Debbie Midgley, Recording Secretary

**MEMBERS ABSENT:**

Chip McCarthy, Alternate Member

**OTHERS PRESENT:**

Andrew Hartwell, AICP, Assistant Township Manager  
Shawn Wingrove, P.E., Township Engineer  
Leah M. Attanucci, LaGamba Reporting Services  
Patrick Cooper, P.E., Gateway Engineers  
Ed Napoleone, Nappies Food Service

**PUBLIC COMMENT:** (on agenda action items only, excluding public hearings):

There were no public comments.

**REORGANIZATION:**

Mr. Cosgrove asked for a motion of Chairman for the Zoning Hearing Board for the ensuing year.

**A motion was made by Mr. John Scott to appoint Mr. Brant Miller as Chairman for the year 2022, motion carried.**

Mr. Miller asked for a motion of Vice Chairman for the Zoning Hearing Board for the ensuing year.

**A motion was made by Mr. John Scott to appoint Mr. Dan Patterson as Vice Chairman for the year 2022, motion carried.**

Mr. Miller asked for a motion of Recording Secretary for the Zoning Hearing Board for the ensuing year.

**A motion was made by Mr. John Scott to appoint Ms. Debbie Midgley as Recording Secretary for the year 2022, motion carried.**

Mr. Miller asked for a motion of Solicitor for the Zoning Hearing Board for the ensuing year.

**A motion was made by Mr. John Scott to reappoint Matthew Marshall and the law firm of Dillion McCandless King Coulter & Graham, LLP as Solicitor for the Zoning Hearing Board in accordance with the rates and terms referenced in the letter dated December 9, 2021, motion carried.**

**ADMINISTRATIVE:**

Mr. Miller asked for a motion to approve the minutes from the October 28, 2021 meeting.

**A MOTION WAS MADE BY Mr. JOHN SCOTT , SECONDED BY Mr. DAN PATTERSON TO APPROVE THE MINUTES FROM THE OCTOBER 28, 2021 MEETING. MOTION CARRIED.**

Mr. Miller said prior to this meeting, the Board held an executive session to receive advice of the Solicitor.

Mr. Miller said that notice of tonight's hearing was advertised, and the subject properties posted pursuant to the requirements of the Pennsylvania Municipalities Planning Code.

Mr. Miller asked the Court Reporter to swear in witnesses and any members of the public wishing to comment during any of the hearings.

The Court Reporter swore in the witnesses.

**OLD BUSINESS:**

There was no old business.

**NEW BUSINESS:**

**1. Nappie's Food Service Variance Application**

- a. Mr. Miller opened the public hearing on the A & E Land Development, LP Variance Application and summarized the application as follows:

An application filed by A&E Land Development, LP c/o Nappie's Food Service, requesting: 1) a variance from the street tree and landscaping requirement under Article III, Section 313(4) of the Zoning Ordinance; 2) a variance from the street tree and landscaping requirement under Article III, Section 313(6) of the Zoning Ordinance; and 3) a variance from the continuous internal sidewalk requirement under Article III, Section 317(3) of the Zoning Ordinance, in order to permit the expansion of the existing building and parking area on property located at 8051 Steubenville Pike in the B-2

General Business Zoning District currently designated as Allegheny County Parcel ID Nos. 799-B-4 and 799-E-2.

- b. Mr. Miller stated that Exhibits 1 through 11 referenced on the Exhibit List prepared by the Board Solicitor are entered into the Record of this hearing. Mr. Miller requested that the court reporter insert those exhibits into the transcript as if the Exhibit List was read into the Record.
- c. Applicant's Case. Mr. Patrick Cooper, Gateway Engineering, on behalf of Applicant, A&E Land Development, LP, presented the Applicant's case and responded to the Board. Mr. Ed Napoleone owner of Nappie's Food Service is also present to respond to the Board.

Mr. Cooper said the applicant is seeking variances to the requirement for interior landscaping.

Mr. Cooper said this is the 5<sup>th</sup> phase of the construction project. In 2012 the applicant submitted plans for phase 4 and 5 and received approval at that time. Phase 4 was constructed and phase 5 that was proposed then was not constructed, and at this time the applicant is submitting a smaller version of that phase.

In reference to variance request Article III, Sec. 313 (4) and Sec. 313 (6):

Mr. Cooper submitted a photo of the current trees and the Board accepted that photo as Exhibit 12.

Mr. Cooper stated the applicant would like to be consistent with what is currently planted there.

Mr. Napoleone stated that the preference would be to plant the same as the existing trees along Steubenville Pike and keep the meadow look that is currently there.

Mr. Cooper stated the applicant would not like to plant the required, 1" diameter trees, feels they would not take to the 2:1 slope. Would prefer to plant a variety of trees to stabilize the slope.

Mr. Miller said the ordinance states that a 2:1 slope the trees are to be planted, and the Board is bound by that ordinance.

Mr. Cooper said yes, he agrees.

Mr. Miller said to clarify, he understands that Mr. Cooper is saying that the trees have little chance of growing, and he assumes he will hear from another engineer that the trees do have a chance of growing. Mr. Miller said the Board is supposed to understand Mr. Cooper's request as being not to plant the trees, and not to plant the seed mix, but to just plant grass.

Mr. Napoleone said he would be willing to plant the seed mix with the trees in it, or just do the grass.

Mr. Miller said that is a third option.

Mr. Miller said what is to be adjudicated here is what is stated in the ordinance, that it is 2:1.

Mr. Miller asked is there something perhaps about the soil content, is it rock, is there something of which we are not aware. Mr. Miller said he does not know how the Board can say that the ordinance itself is wrong.

Mr. Cooper stated that where the building is being constructed it is dangerous to plant what the ordinance requires.

Mr. Miller asked to clarify, where does the ordinance require the trees be planted, where the rock is, or where the soil is.

Mr. Cooper said everywhere, does not differentiate.

Mr. Miller asked if there is a core sample.

Mr. Cooper said there is a Geo-Technical report, he does not have it with him.

Mr. Miller said that it seems as though you are speculating.

Mr. Napoleone said that the Geo-Technical report was submitted.

Mr. Cooper said it was submitted along with the subdivision and land development application to the Planning Commission. The Geo-tech report was not submitted as part of the variance request.

Mr. Scott said he understands the seed mix has tree seeds in it, is there any idea as to what kind of tree seeds, they are.

Mr. Cooper stated the several types of trees in the mix, and have a greater chance of survival.

Mr. Scott asked if 2:1 is a mowable slope and is that what is being mowed now.

Mr. Napleone said they use a brush hog.

Mr. Cooper said it is not something that can be mowed with a normal mower.

Mr. Miller asked if there are any exceptions in the ordinance, that when faced with a 2:1 slope like this that would prevent the planting of the trees, like rock.

Mr. Cosgrove said he does not believe so, that would potentially be categorized as a unique physical condition, which would create an unnecessary hardship, with the variance requirements. The difficulty though is it would still need to be proven that would preclude development, and straight conformity.

Mr. Miller said the ordinance is written as it is, and he does not know how they can get around that.

Mr. Cooper said to comply with the ordinance could lead to a landslide on Nappie's property and that creates a hardship to the applicant.

Mr. Scott said it depends on what is in the soil, and without the report it is difficult to know.

Mr. Miller said perhaps we can table the second request and wait for the core sample.

Mr. Miller said let us move onto the third variance request at this time.

In reference to variance request Article III, Sec. 317(3):

Mr. Cooper explained that the continuous internal sidewalk is not feasible due to the fact that is not a public facility, there is not a need for a sidewalk, and the applicant does not want to promote a dangerous situation.

The Board called for a recess at 7:30pm and reconvened at 7:45pm.

Mr. Miller said that during the break the Board held an executive session to receive advice of the Solicitor.

- d. Township's Case. Mr. Andrew Hartwell, Assistant Township Manager and Mr. Shawn Wingrove, of Lennon, Smith and Souleret Engineers, presented the Township's case and responded to Board questions.

Mr. Hartwell said in light of previous testimony, the Township needs clarification regarding Sec. 313(4)., what is being proposed. Is Bufferyard C being proposed in lieu of the street trees because what is currently there is not Bufferyard C, need to be clear on what is proposed to planted there.

Mr. Cooper said what was constructed in 2013, were red maples spaced at 15 feet, what is being proposed is a continuation of the maple trees at 6 foot high, spaced at 15 feet, to fill the gaps.

Mr. Hartwell said the Township's position is, the street tree requirement is 1 tree 35 feet on center, Bufferyard C is required to be provided along primary roadways. The ordinance has a provision, in it that takes into consideration the fact that an applicant would not want Bufferyard C and street trees to be provide, by saying if the street trees are provided, then Bufferyard C does not need to be provided. The Township's position on the matter is that the street trees are the relief. The street trees need to be provided along the entire length of the property, not just the gap areas.

Mr. Miller asked Mr. Cooper where is the starting point and end point of the proposed planting.

Mr. Cooper showed a rendering of the proposed plantings.

Mr. Miller asked for the length of the property.

Mr. Cooper said yes.

Mr. Cosgrove asked about the other side of current plantings.

Mr. Cooper said nothing has been proposed at that location.

Mr. Miller asked Mr. Hartwell if that was acceptable.

Mr. Hartwell said the goal of the ordinance is to have street trees along the entire frontage.

Mr. Cooper said this was not required in 2012 with the last expansion.

Mr. Cosgrove said that may be correct, but it is required now and that requires being in compliance with the entire streetscape.

Mr. Cooper asked even though a variance was granted.

Mr. Cosgrove said that variance was granted to a zoning variance that is no longer applicable. The zoning ordinance that was adopted last year is now the governing law.

Mr. Cosgrove asked if that is something the applicant would be amendable too, planting on the right hand side to the current planting.

Mr. Cosgrove asked Mr. Cooper, when mentioning Bufferyard C was that an example.

Mr. Cooper said the applicant is asking to match what the Township asked the applicant to plant in 2012 and continue it along the property.

Mr. Cosgrove said the requirement that is applicable that has to be complied with is, street trees along the entire width and length of the property along the street, which are a minimum of 1.5 inches DBH and shall be a minimum of 10 feet in height, and shall comply with the list of permitted street trees.

Mr. Cosgrove said to clarify the applicant is asking rather than 10 feet in height and 35 feet in spacing, to just make that 6 feet in height and 15 feet in spacing to be consistent with what is currently there.

Mr. Cooper said that is correct.

Mr. Cosgrove said as Mr. Napoleone has testified that planting along the entire streetscape is something he would do, so rather than 10 feet high and 35 feet spacing, it will be 6 feet high and 15 feet in spacing, and compliant that it will be along the entire streetscape.

Mr. Cooper said correct.

Mr. Cosgrove said Bufferyard C is not applicable here because they are going to comply with streetscape requirements, but are asking for a modification from that requirement.

Mr. Hartwell submitted a copy of bufferyards from the Township Zoning Ordinance and the Board accepted that as Exhibit 13.

There was a discussion in regard to street trees, bufferyards, and sidewalks.

Mr. Hartwell said what is being proposed is difficult to envision, if the hearing will be continued to next month, perhaps Mr. Cooper can put an exhibit together showing this comprise and present it at the continue hearing.

Mr. Cosgrove said at this time it is up to the applicant as to what they want to present.

Mr. Cosgrove said if the Township agrees that what is being proposed would be considered street trees, if they are, then Sec.313(4) would be applicable and a variance could be granted. If the Township decides they are not street trees, then it would be considered a buffeyard and would have to go through Conditional Use approval from the Board of Supervisors.

Mr. Miller said thank you for the clarification.

Mr. Cosgrove suggested to Mr. Cooper to propose something, present it to Mr. Hartwell and have it determined if it qualifies as a street tree or a buffeyard, from there a course of action can be decided.

Mr. Cosgrove said what is proposed is ultimately up to the applicant.

Mr. Hartwell said regarding the second variance request to Sec. 313(6), steep slopes, he will defer to Mr. Wingrove the Township engineer.

Mr. Wingrove said what is important to understand, the hardship here and the concerns that Mr. Cooper presented, as we sit it is difficult to determine the stability of the slope. He said the application that was submitted in the letter from the geo-technical consultant was relativity general. He has since received an updated land development submittal along with a geo-technical report.

Mr. Wingrove said he thinks it would be appropriate that some additional information is collected that is site specific, to what was actually found. He said specific to this site, rather than a blanket statement of 2:1 slopes. He said that is important information for staff to consider as well as the Board to take a look at, rather than something general.

Mr. Miller asked if there were any questions or comments.

Mr. Hartwell said the Township reserves comment for a future meeting, based on what evidence may be presented.

Mr. Hartwell said regarding the third variance request to Sec. 317(3), internal sidewalks.

Mr. Hartwell said there is a difference opinion here, the Township feels that the sidewalk because of the issues that were brought up by the applicant, safety and what not is an important aspect of the site. He said a sidewalk is be constructed along the street connected two developments on either side of this development. He said the Township hopes Nappie's is there for a very long time, however, it could be sold tomorrow, and it turns into a different business, which may have a lot of foot traffic. He said the Township cannot go back and request a sidewalk be constructed, only if there would be a new land development application. He said the Township feels this is a safety issue and also to tie the site together.

Mr. Miller asked Mr. Hartwell for clarification on the sidewalk if the property were to be sold in the future.

Mr. Hartwell said if there would be a conditional use or a special exception, the application would come through the approval process again, however if it is a use by right it does not necessarily come through land development approval.

Mr. Miller asked if there is anything more the Township would like to add.

Mr. Hartwell said no.

e. Public Comment.

Mr. Anthony Sokac, resident, spoke in support of the applicant.

f. Executive Session: None.

Mr. Miller asked for a motion to close or continue the Public Hearing.

**A MOTION WAS MADE BY Mr. DAN PATTERSON , SECONDED BY Mr. JOHN SCOTT TO CONTINUE THE PUBLIC HEARING UNTIL MAY 26, 2022 AT 7:00 P.M. MOTION CARRIED.**

**PUBLIC COMMENT:**

There were no public comments.

**ADJOURNMENT:**

**A MOTION WAS MADE BY Mr. JOHN SCOTT, SECONDED BY Mr. DAN PATTERSON, AND CARRIED, TO ADJOURN THE MEETING AT 8:29 P.M. MOTION CARRIED.**

Respectfully submitted,

Debbie Midgley  
Zoning Hearing Board Recording Secretary