

**WEST HEMPFIELD TOWNSHIP
ZONING HEARING BOARD
April 8, 2014**

The West Hempfield Township Zoning Hearing Board met in the meeting room of the West Hempfield Township Building at 3401 Marietta Avenue, Lancaster, PA, on Tuesday, April 8, 2014. Gary Lintner called the meeting to order at 7:30 P.M. Board members Daryl Peck and Tony Crocamo were also present, along with Matthew Creme, Solicitor; Rhonda Adams, Court Reporter; Jodi Heffner, Zoning Officer; and Darlene Diffenderfer, Recording Secretary.

Approval of Minutes

Motion: Daryl Peck moved, seconded by Tony Crocamo, to approve the minutes of the meeting of March 11, 2014, as presented. Carried 3-0.

Case 1184 – Michael & Rebecca Charles

This application was submitted by Michael and Rebecca Charles, 33 East Second Street, Lititz, Pa for a variance of 12,000 square feet to Section 303.3.A.2 for lot size to permit building of a single family dwelling on property they propose to purchase from Robert Porter located at 2598 Ironville Pike, zoned R-2.

Maria Elliott, Attorney with Barley Snyder, 126 East King Street, Lancaster was present to represent the applicant. Mr. Charles was sworn to provide testimony as the equitable owner.

Ms. Elliott presented a copy of the sales agreement between Mr. Charles and Mr. Porter as Applicant Exhibit #1.

Ms. Elliott stated the vacant lot is located on the northwest corner of the Prospect Road and Ironville Pike intersection and is .3 acres or approximately 13,000 square feet. She stated the variance requested is a dimensional variance to allow construction of a single family home on the lot. She added that public water and public sewer is available to service the property. Ms. Elliott also stated that construction of a house is possible within the building envelope and that all setback requirements would be satisfied. She pointed out that there is vacant farm land to the north and west of the property and residential properties to the south and east so there would be no change to the neighborhood by constructing another residence.

It was determined that the lot was created by a subdivision in 1975 and zoning was established in 1978 which would be a hardship not created by the applicant or current owner.

Mr. Charles stated that he wants to purchase this lot and the property across the street on Prospect Road from Mr. Porter as a real estate investment. He stated he would sell the vacant lot as a building lot and use the proceeds to make improvements to the adjacent property which contains five apartments and is in need of updating.

Rick DeGeorge, 2560 Ironville Pike, Columbia, and Paul Snyder of Superior Realty, Inc. were present and were both sworn to provide additional testimony.

Mr. DeGeorge stated that he owns the adjacent farm and that no other building lots have been created from the farm. He added that he was not approached by anyone with a request to sell additional land to Mr. Porter to make Mr. Porter's lot larger.

Mr. Lintner expressed concern that the requested variance is excessive and no attempt was made to purchase additional land to make it a buildable lot.

Mr. DeGeorge expressed concerns about building on the vacant lot since it was previously used for the septic system for the apartment building across Prospect Road. He also expressed concerns about the control of storm water runoff and the traffic pattern at the nearby four-way stop intersection. He also questioned where all the people from the apartments are going to park who park there now.

It was determined that the vacant lot is currently being used for parking by residents of the apartment building on Prospect Road. Mr. Creme pointed out that no approvals had been given for this lot to be used for parking. Mr. Charles stated that he had an engineer look at the parking issue for the apartment property. He stated that six parking spaces will be created at the front of the property and an additional nine can be created to the rear of the property to be accessed by a driveway on Ironville Pike.

Mr. Charles stated that he would not allow the apartment residents to park on the lot at 2598 Ironville Pike. He added that the proposed new dwelling would have its driveway on Ironville Pike.

Mr. Peck pointed out that the apartment property across the street had nothing to do with the Board's consideration of the vacant lot and the variance requested for it.

Mr. Creme stated that this Board would not make the final decision whether anything could be constructed on this lot. Mr. Creme stated that the lot is a pre-existing, non-conforming lot which is the hardship, but there are significant storm water issues to be considered. He stated that storm water requirements are not the jurisdiction of the Zoning Hearing Board. He pointed out that the new storm water ordinance will be very stringent and will be addressed by the Board of Supervisors.

Mr. Lintner stated that he did not think there was a window on the lot to allow for the creation of a retention basin. Mr. Creme stated there could be infiltration underground, not on the surface.

Motion: Daryl Peck moved, seconded by Tony Crocarno, to deny the request for a variance of 12,000 square feet to Section 303.3.A.2 in Case 1181 at 2598 Ironville Pike. Discussion followed regarding whether or not the lot was buildable. Mr. Creme pointed out that the concerns expressed would all be addressed by another Board before construction could take place. Mr. Peck requested a recess for a brief consultation with Mr. Creme. Mr. Creme stated the Board would recess to Executive Session for consultation with counsel and for quasi judicial deliberation.

When the hearing resumed, Ms. Elliott proposed continuing the case to allow for a more expert opinion on the suitability of the site.

Mr. Peck stated that he was withdrawing his motion to deny the variance.

Ms. Elliott stated she would like to amend the application to add a request for a variance to Section 1005.4.G to allow a one year time extension to obtain a zoning permit from six months to 18 months and from one year to two years for construction of the lot. The application was amended to reflect this request.

Motion: Tony Crocamo moved, seconded by Daryl Peck, to grant a variance of 12,000 square feet to Section 303.3.A.2 to build a single family dwelling at 2598 Ironville Pike with the condition that the lot be posted for no parking from other lots and that all aspects of construction and use of the lot be as described before the Board. Carried 2-1 with Mr. Peck opposed.

Motion: Tony Crocamo moved, seconded by Daryl Peck, to grant a variance to Section 1005.4.G for a one year time extension to obtain a zoning permit and complete construction. Carried 3-0.

Case 1185 – Ginger Kelshaw

This application was submitted by Ginger Kelshaw, 551 Druid Hill Road, Lancaster, PA for a Special Exception to Section 303.2.B.5 to allow an in-home therapeutic massage business. The property is owned by Ginger and Steve Kelshaw and is zoned R-2.

Ms. Kelshaw was sworn to provide testimony. She stated that she currently works for a spa on the Fruitville Pike, but would like to have her own business in her home to accommodate her clients that live in the area. She stated she would serve one to three clients per day, two days per week, in her home and would continue working at the spa 2 1/2 days.

Ms. Kelshaw stated that her house is 2000 square feet, and the business would use less than 500 square feet in one room with its own entrance from the outside. She stated she would not have any exterior signs on the property, and she would not sell any goods. She added that she will not have any employees other than herself.

Motion: Daryl Peck moved, seconded by Tony Crocamo, to grant a Special Exception to Section 303.2.B.5 to allow an in-home therapeutic massage occupation at 551 Druid Hill Road with the condition that all activities will be conducted as described before the Board. Carried 3-0.

Case 1186 – George M. & Lorraine Lewis

This application was submitted by George M. and Lorraine Lewis, 1725 Clear Spring Road, Mount Joy, Pa for a variance to Section 301.4 to allow a sixth subdivision of their property, zoned Rural Agricultural.

Mark Magrecki, Penn Terra Engineering, Inc., 3904B Abel Drive, Columbia, Pa was present to represent the applicants. Mr. Magrecki and Mr. & Mrs. Lewis were all sworn to provide testimony. Also present was Josele Cleary, Township Solicitor, to represent the Township.

Mr. Magrecki submitted Applicant Exhibits #1, #2 and #3 as follows: Exhibit #1 is a copy of the minutes of the conditional use hearing held on December 7, 1982 which approved the subdivision to create the 5.28 acre tract that Mr. and Mrs. Lewis now own. Exhibit #2 is a copy of the recorded subdivision plan, and Exhibit #3 is an aerial photograph of the Lewis property.

Mr. Magrecki referred to page 7 of Applicant Exhibit #1 and pointed out the motion which stated “two lot usage of five lots possible.” He also referred to earlier comments made by Frank Burkhart who stated that it might be good to place the dwelling on a five acre tract so that, in the future, a second dwelling might be built if the sheep business changed.

Mr. Magrecki referred to the comments on the recorded subdivision plan (Applicant Exhibit #2) which stated that a condition of the approved conditional use was that this lot shall constitute two lots.

Mr. Magrecki stated the Lewises purchased their lot in 1982 for their residence and to raise goats and sheep. He stated that the Lewises felt they had purchased two lots with their property; that the former owner of the property had five subdivision rights who retained three for himself, and sold two to Mr. and Mrs. Lewis. He stated they no longer raise sheep and goats and wish to exercise the second subdivision right. He stated that it is his understanding that the Township considers two rights were used when the lot was created.

Mr. Magrecki stated the existing lot is served by on-lot septic and private well and the proposed new lot would also have private septic & well.

Ms. Cleary submitted a copy of the deed to the Lewis property as Township Exhibit #1 after Mr. Lewis confirmed that it was the deed to his property.

Ms. Cleary stated that Mr. Buckwalter preserved his farm in 2007 and part of that preservation was a declaration of restriction of development. She submitted a copy of this declaration as Township Exhibit #2. She stated this document included a history of the tract and stated that four of the five development rights were used and extinguished, and Mr. Buckwalter retained one for himself.

Ms. Cleary referred to Applicant Exhibit #2 and questioned Mr. Magrecki whether it was approved by the Lancaster County Planning Commission rather than the Township. Mr. Magrecki agreed that was the case since the Township did not have a subdivision ordinance at that time.

Ms. Cleary continued by questioning Mr. Magrecki about the notes on Applicant Exhibit #2 as compared to the motion made by the Board of Supervisors in the conditional use hearing of 1982. Her questions pointed out that the language of a note on Applicant Exhibit #2 is not the language of the motion in the conditional use hearing minutes; that the word "usage" was what the Supervisors adopted in their motion and the note on Exhibit #2 does not reflect that terminology.

Ms. Cleary questioned Mr. Magrecki if there was a reason the Lewis property could not continue to be used as a single residential property. Mr. Magrecki stated that it could continue in that manner, but they had purchased the property as part of planning for their retirement.

Ms. Cleary stated that it is the Township's position that a condition on allowing an over-sized lot in the conditional use hearing for Mr. Buckwalter was that this constituted usage of two lots; that it was not a sale or allocation of the lots, it is use and once it is used it is no longer there. She stated that, in effect, Mr. Buckwalter was penalized for creating a lot larger than the maximum allowed in the Rural Agricultural zoning district.

Mr. Creme pointed out that the Board members have not seen the declaration of restriction of development that is Township Exhibit #2. Mr. Creme read the portion which referred to the sale of TDR's to the Township by Mr. Buckwalter which stated that 8 TDR's were used by the Lewis subdivision.

Mr. Creme asked if it was the Township's position that it was not a matter of allocating as much as it was consuming rights. Ms. Cleary agreed that was correct; that the word usage is not the same as allocate. She stated that for the right to have a lot larger than allowed Mr. Buckwalter used two lots.

Ms. Cleary stated that the request for a subdivision that is in excess of what the parent tract was allowed is a use variance, and there is no hardship for a use variance. She stated the Township has had limitations on subdivision rights on rural agricultural properties since 1978 and is something the Township has consistently enforced. She also stated that adding more lots in the Rural Agricultural district weakens the entire purpose of limitations on subdivisions.

Ms. Cleary stated that when there is no hardship to warrant an extra lot the Township strongly urges the Board to deny the variance.

Mr. Creme stated that he understands the Township's position through the discussion of the meaning of the word usage is all in support of defining what the request is before the Board. He stated that he understands the Township is saying usage means that the subdivision rights were used or extinguished so the only possible request that can be made, within the jurisdiction of this Board, is for a use variance for a sixth right of subdivision. He further stated that the argument is that the applicant has not met his obligation for a use variance. Ms. Cleary stated that was correct.

Ms. Cleary submitted Township Exhibit #3 which is a letter dated April 9, 2013 from the Township Manager to Mr. Magrecki informing him of the history of the Buckwalter tract. She stated there has been no attempt to appeal the content of this letter. Mr. Magrecki stated he did not understand that they would have an appeal process other than to request the variance they have requested.

Mr. Lintner questioned when the Lewis property stops being part of the parent tract and becomes its own property. Ms. Cleary stated that, as long as the property is in the Rural Agricultural zone, all rights to subdivision relate back to the parent tract from which it was created.

In closing, Ms. Cleary presented a Memorandum of Law to the Board members.

Since new documents had been presented, which the Board had not reviewed, it was suggested the case be continued to the next month's hearing before the Board makes a decision. Mr. Creme stated that he would send copies of all the Township's exhibits to the Board members for their review.

Motion: Daryl Peck moved, seconded by Tony Crocamo, to continue Case 1186 to the meeting of May 13, 2014 with testimony remaining open. Carried 3-0.

At this time, Mr. Creme left the meeting stating he had a conflict of interest with Case 1187. Julie Miller, Attorney assumed the position of solicitor for the Board for that case. Due to the length of the meeting, a brief recess was called before hearing Case 1187.

Case 1187 – St. Mary Coptic Orthodox Church

This application was submitted by St. Mary Coptic Orthodox Church, 3602 Marietta Avenue, Lancaster, PA for a variance of 5000 square feet for maximum building area for construction of a new worship

building on property they own located at 750 Summit Drive, zoned Traditional Village.

Jill Nagy, Esquire, 200 Spring Ridge Drive, Suite 202, Wyomissing, PA was present to represent the applicant. Also present were Magdi Kaldas, Secretary of the Board of St. Mary's Church and David Sarabok, Leight-Heigel and Associates, Inc., 930 Red Rose Court, Suite 103, Lancaster, Pa. Mr. Kaldas & Mr. Sarabok were both sworn to provide testimony.

Ms. Nagy stated the applicant is requesting a dimensional variance for a worship building. She stated they are permitted 6000 square feet by right and the Board of Supervisors can permit up to 10,000 square feet by modification of the standards under Section 403.3.B.3.d, resulting in the request for a variance of 5000 square feet to allow a building of 15,000 square feet.

Ms. Nagy submitted the following exhibits: Applicant Exhibit #1 is a copy of the deed for the church property on Summit Drive; Applicant Exhibit #2 is an aerial photograph of the property; and Applicant Exhibit #3 is the proposed plot plan for the construction of the new worship building and parking lot.

Mr. Sarabok stated that the property is 5 acres with 4.76 acres after the reserved driveway. He stated they propose constructing a building of 15,000 square feet with a seating capacity of 350 people as well as a parking lot with 177 parking spaces to include 169 regular spaces and 8 handicapped spaces. He stated the property will be serviced by public water and public sewer.

Mr. Sarabok stated that most of the traffic to the property will be on Sundays, with very little traffic at other times. He also stated that the property is located in a very rural area and will have little impact on the neighborhood since it is surrounded by mostly farm land and pasture. He added that the narrow frontage and deeper lot will minimize the impact of the building as observed from the neighborhood.

Ms. Nagy stated that the Federal Religious Freedom Act would apply in this case because the congregation has a unique national origin which is explained in a memorandum of law she submitted to the Board members.

Mr. Kaldas stated that the new building will be used for their worship services as well as establishing a senior citizen center that would benefit the community. He stated that the church is growing due to more immigration from Egypt because of the conflict in that country. He stated the church helps these new people learn the English language and find jobs.

Mr. Kaldas stated the existing church building on Marietta Avenue is very overcrowded and due to the nature of their services they are holding services on different days to accommodate all of the congregation and lessen crowded conditions on Sundays. He stated their religion does not allow them to use an altar again for nine hours after it is used which requires them to have three altars to allow different services. He explained the three altars is part of the reason for the proposed 15,000 square feet for the new building. He added that the new building will also include a large baptismal room, classrooms for their Sunday school, a large room for small children and their mothers so the children do not disturb the worship services and a large functional area in the basement level to accommodate wedding receptions and funerals.

Mr. Kaldas stated there are no other churches within the Lancaster area for people of this religious sect.

Mr. Lintner stated that traffic in this area would be his main concern. Ms. Nagy replied that a traffic study and traffic plan would probably be part of the conditional use hearing. Mr. Lintner also expressed concern that a variance of 5000 square feet is not a diminimus variance.

The height of the proposed new building was discussed. Mr. Sarabok stated the maximum is 45 feet for a building over 2 stories, and this building will be within that limit at 2 1/2 to 3 stories on the south side.

Mr. Kaldas stated they will retain ownership of the existing church property on Marietta Avenue to be used as a small chapel. He stated the church also owns the property next to it at the corner of Marietta Avenue and Summit Drive. He stated they propose installing sidewalk from the new church to the existing property with approval from a private property owner that is between the two properties.

Mr. Peck stated that he has concerns about the impact on traffic in the traditional village area with 175 parking spaces in the proposed parking lot. A lengthy discussion followed regarding the parking lot and the amount of traffic it would generate now and in the future. It was determined that the size of the parking lot is dictated by the seating capacity of the church building.

Mr. Crocamo stated that, if all the parking spaces will never be filled with three services being held, the applicant could request a variance for the parking lot to have fewer parking spaces. Mr. Kaldas replied that they will need the full number of spaces on special occasions and on holidays such as Easter and Christmas Eve.

Mr. Lintner pointed out that discussion of the parking lot does not apply to their consideration of the size of the building. He added that traffic impact issues should be addressed as part of the conditional use approval.

Mr. Linter stated that he was not convinced they needed 15,000 square feet for their needs; that the variance requested is not diminimus. Mr. Crocamo stated that he thought they had presented their needs given the unique requirement they have for the three altars.

The Board members concurred they were not ready to make a decision on this case and, due to the late time, would propose continuing it to the next meeting.

Motion: Daryl Peck, seconded by Tony Crocamo, to continue Case 1187 to the meeting of May 13, 2014 with testimony remaining open. Carried 3-0.

There being no further business to come before the Board, the meeting was adjourned at 11:15 P.M.

Respectfully submitted,

Daryl Peck
Secretary

