

**WEST HEMPFIELD TOWNSHIP ZONING HEARING BOARD**  
**3401 MARIETTA AVENUE**  
**LANCASTER, PA 17601**  
**October 13, 2015**

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, October 13, 2015. Gary Lintner, Chairman, called the meeting to order at 7:30 P.M. Board members Daryl Peck and Tony Crocarno were also present, along with C. Edward Browne, Solicitor; Rhonda Adams, Court Reporter; Jodi Heffner, Zoning Officer; and Marsha Beamenderfer, Recording Secretary.

**Approval of Minutes**

Motion: Daryl Peck moved, seconded by Gary Lintner, to approve the minutes of the meeting held September 8, 2015 with revisions. Carried 2-0.

**Case 1213– Jana Filling-(continued)**

Jana Filling, 3855 Columbia Avenue, Mountville, PA, 17554 was sworn in to provide further testimony. John W. Metzger of May, Metzger, Zimmerman LLP, 49 N. Duke St., Lancaster was also present as Ms. Filling's lawyer. Mr. Metzger stated that at both the July 14, 2015 and the August 11, 2015 meetings there was substantial testimony taken and there were a few areas that he wanted to elaborate in the testimony Ms. Filling had given previously. Mr. Lintner stated that those minutes were from Case 1212 and would have no bearing on Case 1213 which is a new case. M. Metzger asked the Board to take judicial notice to the minutes of these previous meetings.

Mr. Metzger questioned Ms. Filling about when the application was presented to the Township and she stated that it was in July 2015 and it was seeking approval for a contractor's office. Since that meeting the initial application has been revised to a parking variance and a second use for the property.

Mr. Metzger asked Ms. Filling to characterize for the Board the area that she lives in and the types of properties that surround the property seeking the zoning designation. The property is zoned Commercial-2 and behind her is General Industrial, beside her is the abandoned Filling Cleaners building which hasn't been used for 5-7 years and has been condemned environmentally. In the general area of her property are some rental homes and apartments as well as Cozee Court Motel which is also a rental property. There is also Cooper Booth, a trucking warehouse that is 300 yards from her property. Mr. Metzger asked Ms. Filling if there were any other owner- occupied single family homes in the area she lives in and Ms. Filling said no.

Mr. Metzger asked Ms. Filling how many parking spaces there are for purposes of what she wants to do. She stated it would need 7-10 spaces and she is flexible with that number. The parking would not interfere with the use of the driveway for her or the neighbor. Mr. Metzger

questioned Ms. Filling whether they would see clients at the property or if employees would be seen there and she stated no. The employees would meet at the job site each day.

Mr. Metzger questioned Ms. Filling that in order to facilitate what she wants to do she is requesting a variance that would allow specifically to park a small dump truck, a small pick-up truck and from time to time a rented chipper for more than one day at a time. Ms. Filling also stated that she has discussed her proposed business with the neighbors and they stated that it was fine with them.

Mr. Metzger asked Ms. Filling that if in the event she would be authorized by variance to conduct a business like this, would she be willing to take any reasonable steps necessary to make sure that whatever vehicles are parked on the property would be shielded from view by the adjacent properties. Ms. Filling stated that she would be willing to either plant bushes or put a fence up for coverage, whatever is necessary.

Mr. Lintner stated the reason for the need of the second application was because the first application was for a contractor's office, and substituting that contractor's office for a dance studio office would not have been an issue in that zoning district. As soon as it became an issue of keeping equipment, there it is no longer a contractor's office - it is a contracting yard or a staging area which does not fit in the C-2. The case was not advertised to do anything more than the office and it wouldn't have been defensible in court to back up the decision if the neighbors would come back and dispute it.

Mr. Lintner stated that he feared stock piling of mulch, chippings, logs etc. waiting to be chipped and Mr. Metzler stated that Ms. Filling would be happy to meet conditions to accompany any grant that would prohibit her from stockpiling anything.

Mr. Peck then asked Ms. Filling to state what she was asking for on this application since this was advertised and was the second application. Ms. Filling stated that she wanted to be able to park the business vehicles which include a small non-commercial dump truck, a pick-up truck and a chipper when needed for 2-3 days at a time and possibly a trailer in the future.

Mr. Lintner questioned on Applicant Exhibit #1 which is an aerial view with a "x" placed to delineate her property. To the left on the picture is the Filling Cleaners building and to the east of her house is a rental property in which Ms. Filling has a formal agreement with to share the driveway. The stony area is where Ms. Filling would park the vehicles. Mr. Lintner also questioned about planting a row of trees to the south side of the parking area which is a grassy area toward Columbia Avenue.

Mr. Crocarno questioned whether the 7-10 parking spaces would be for personal cars as well as the business cars? Ms. Filling would be parking her personal car closest to the house.

Mr. Peck is still concerned that without another contractor's yard somewhere else they will have all the saws and other equipment on the trucks every day when they come home. This is some concern to the Township and requires some relief that she is asking for. Ms. Filling stated that

they would use a utility trailer or a large tool box to store the equipment.

Mr. Peck stated that what is being asked for is a use variance which is very difficult to approve. Mr. Metzger stated that Ms. Filling has met the burden that she has and that she is in an area which is a group of residential, commercial and industrial type businesses combined. There is also an abandoned property which was a dry cleaning plant next door and which people should be concerned about soil contamination. If Ms. Filling lived in a development she wouldn't be at this hearing asking for something that would impact her neighbors.

Motion: Tony Crocamo moved, seconded by Daryl Peck, that for Case 1213 that a variance be granted to Section 402.2 to establish two principal uses to the lot at 3855 Columbia Avenue, Mountville, that the one use be the residence and the other be the tree trimming service contractor's office with the following stipulations: 1) the parking area be limited to a 5 ton dump truck, utility trailer, pick-up truck, personal car and occasionally a chipper; 2) no activities connected to the business with the use of those items are done on site; 3) no stockpiling of materials or product on site; 4) the parking area will be screened from view of Columbia Ave with planting or a fence; 5) no client participation at the residence; 6) no commercial signage, and 7) all other activities are as described before this Board at this hearing. Carried 2-1. Peck opposed.

### **Case 1215–Mark Shaw**

Mark Shaw, 3883 Sterling Way, Columbia, PA 17512 was sworn in to provide testimony. Mr. Shaw provided copies of a plan marked as Applicant's Exhibit #1. Mr Shaw is asking for a special exception to Section 705.2.A expansion of non-conforming uses at the property at 4652 Breezyview Drive, Columbia. It is zoned R-3 and is owned by Barry McCarty. They are asking to put a 352 square foot addition on the home and cannot meet the setback needed. According to West Hempfield Township Zoning a corner lot has two front yards and two side yards that require a 46-1/2' setback from the new addition to the centerline of Old Chickies Hill Road. They only can provide 42'. They are asking the Board to make a special exception to allow them to encroach into the setback by 4 1/2' which allows an additional 25% of the non-conforming use building square footage

Mr. Peck questioned whether the addition would be any closer to the road than the existing home and Mr. Shaw stated no. Mr. Lintner questioned why the addition couldn't be pushed back an additional 4 1/2'. Mr. Shaw stated the reasons are the square footage, room layout and the size of the bathrooms. The addition does not go up to the corner of the existing home. They also didn't want to cut another door into the existing home. They would be able to use an existing window.

Mr. Lintner stated Mr. Shaw was constructing a structure within the setback of the roadway. He also stated that the house would predate any zoning. Mr. Lintner also stated that they had to add to the existing application a variance for front yard setback 304.4.A.3. Mr. Lintner questioned Mr. Shaw as to whether it was a 1 story addition and Mr. Shaw said yes.

Breezyview Drive, Columbia, to grant a special exception to 705.2.A for the expansion of a non-conforming use that the expansion is 15.8%, and that everything is carried out and instructed as described before the Board. Carried 3-0.

Motion: Daryl Peck moved, seconded by Tony Crocamo, for Case 1215 to grant a variance to Section 304.4.A.3 for the property at 4652 Breezyview Drive, Columbia to allow a 4 ½' variance for the front yard setback for Old Chickies Hill Road, with the condition that everything is carried out and instructed as described before the Board. Carried 3-0.

### **Case 1216-John & Rose Spangler**

John Spangler, 226 Main Street, Landisville, PA 17538 was sworn in to provide testimony. Mr. Spangler stated that he purchased the land at 775 Prospect Road, Columbia from Carolyn R. Tingley on August 31, 2013 and at that time there were 3 mobile homes on the lot and he was able to build a single family home on it. Now in 2015 he is unable to build a home on a lot that is less than 1 acre which has recently changed and the lot is .6 acre.

Carolyn R. Benshoof, formerly Carolyn Tingley, 1423 Fieldstone Drive. Mount Joy, PA 17552 was also sworn in to provide testimony. Mrs. Benshoof had 2 vacant lots behind her house and a modular home beside her. She purchased all three properties. The beige house was her old house and she added 1 acre to that house. In 2007 she got married and put an acre with the new house which is 781 Prospect Road. Then she had the opportunity in 2011 to purchase the lot with the mobile homes on it which were taken down and the lot was readied to be built on. There is a survey with a building envelope on it and Mrs. Benshoof had house plans that were approved and she was going to build on the vacant lot at 775 Prospect Road but decided not to build. When Carolyn got married for the second time they decided to sell the big house because of maintenance issues. Mr. Spangler is in a lease purchase agreement with Mrs. Benshoof to purchase the land but he wants to end that lease purchase and sell the lot.

Mr. Lintner questioned whether there was public water and sewer on the lot and Mrs. Benshoof stated yes there was. Mr. Peck questioned if they are looking for a variance to construct a home on an undersized lot, and if the drawing is what could be done and not necessarily proposing to build. They are looking for a variance to be able to sell a buildable lot. Mrs. Benshoof stated yes to all of the questions.

Motion: Tony Crocamo moved, seconded by Daryl Peck, to accept Tyler Kelley, 781 Prospect Road, Columbia, PA as a party of interest to this proceeding and was sworn in to provide testimony. Carried 3-0.

Tyler Kelley purchased the home in April knowing that there was a vacant lot next door. Mrs. Benshoof owned both properties and at that point the Kelleys had the opportunity to purchase both, but the price she was asking was above what they could afford at that time. Mr. Kelley contacted Jodi Heffner about what could be done with the land next door, knowing that there had been a trailer there before and he didn't want that to happen again. Mr. Kelley also questioned if a house could be built on that because it wasn't within the 1-2 acre restrictions, and Ms. Heffner

said not without a variance.

Mr. Kelley purchased the house knowing that it had to be 1-2 acres for a new building and they didn't want someone building right on top of them or obstructing the views. With the building envelope a lot of the views would be obstructed and even if the building height is limited to a 2 ½ story home or 35' tall the views would still be obstructed. Mr. Kelley doesn't think that the lot is within the 1-2 acres that would make it a buildable lot for a house, so therefore he thinks that the value of the lot is less than what Mrs. Benshoof thinks. If a house is built on this lot Mr. Kelley isn't going to be able to sell his house with another house right up against his house.

Mr. Kelley questioned the Board that if a variance is granted is there a way that he can have a say about the proposed house and Mr. Lintner said no. Mr. Kelley said that he contacted the Zoning Officer when he purchased the house and was told that that lot did not meet the specifications to build a house on it. Therefore Mr. Kelley thinks that a house should not be built there.

Mr. Lintner questioned whether there is still more land behind this property and was told it is a farm. Mr. Lintner stated that there is always a possibility that more land could be added to this lot and a house could still be built. Mr. Lintner stated that there never was a formal variance for this property.

Mrs. Benshoof stated that all she wants to do is sell the lot and have it be taken care of. Mr. Spangler also stated that the reason that he has the lease is so he can sell it. To have the right to be able to sell, they have to have the right to be able to build on the lot. Mr. Spangler said he understood that it was already approved to be able to build on. The property already has water and sewer, which Mr. Spangler is paying for as well as a driveway.

Mr. Browne, Township Solicitor, questioned how the lot was created-was it parceled off or was it part of a sub-division plan? Mrs. Benshoof stated that it was done 50 years ago when there were no plans of any kind. When they got the land all they did was clear it out and didn't disturb any boundaries.

Mr. Crocamo questioned Ms. Heffner whether she searched the records for any previous variances and she stated that there were variances that have expired. Mrs. Benshoof then stated that they got the house plans approved but they decided to stay in the house at 781 Prospect Road until they decided that house was too big.

Mr. Crocamo proposed that the Board continue the case to the November 10, 2015 meeting and that the three families involved have some conversations. They may have a solution without the Board's involvement. Mr. Spangler stated that Mr. Kelley is going to want to mention that it is not a buildable lot right now so the value of the lot isn't very strong. If Mr. Kelley doesn't purchase the lot, Mr. Spangler has people who want to put a very nice home on the property. Mr. Spangler doesn't want to continue the case for that reason. Unless a variance is granted it isn't a buildable lot right now and he is in a continuum.

Mr. Browne wanted to know why this is a hardship if a house isn't built on the property and what else this property can be used for. The property cannot be farmed because of a large driveway right down the center and concrete pads there. It could be used as an addition to another property.

Mr. Spangler questioned why variances were granted on other lots that have met less of the required conditions. Mr. Lintner stated that these other variances were granted because there were definite plans on what they wanted to do with the lot and not "maybe I would like to sell this lot to someone who may build a house of a questionable design." The Board can't grant variances or relief based on an "I'd like to." Mr. Spangler is trying, from a land owner's perspective, to make the lot sellable.

Motion: Daryl Peck moved, second by Tony Crocamo, to continue Case 1216 until the November 10, 2015 meeting. It will be first on the agenda. Carried 3-0.

There being no further business to come before the Board, the meeting was adjourned at 9:30 P.M.

Respectfully submitted,



Tony Crocamo, Secretary