

**WEST HEMPFIELD TOWNSHIP  
3401 MARIETTA AVENUE  
LANCASTER, PA 17601**

**WEST HEMPFIELD TOWNSHIP ZONING HEARING BOARD  
May 12, 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, May 12, 2015. Gary Lintner called the meeting to order at 7:30 P.M. Board members Daryl Peck and Tony Crocamo were also present, along with Rhonda Adams, Court Reporter; Jodi Heffner, Zoning Officer; Bernadette M. Hohenadel, Solicitor, and Marsha Beamenderfer, Recording Secretary.

**Approval of Minutes**

Motion: Gary Lintner moved, seconded by Tony Crocamo, to approve the minutes of the meeting of April 14, 2015, as presented. Carried 3-0.

**Case 1204 – Robert A. & Heidi R. Keller (continued)**

Mr. Lintner stated that Case 1204 Robert A. & Heidi R. Keller was a continuation from the April 12, 2015 meeting with testimony remaining open in the event of further testimony. J. Dwight Yoder, Attorney from Gibbel, Kraybill & Hess, represented the Kellers. Robert A. Keller was asked to come forward to continue to provide testimony. Mr. Yoder distributed a packet of exhibits to the Board, marked Exhibit A-4.

Mr. Yoder began by giving a recap of Mr. Keller's testimony from last month in regard to the intentions of the Kellers when they purchased the property in August 1982. They also purchased the lot beside their home in March 1983 as an investment with the intention of later selling it as a building lot.

Exhibit A1 was a copy of the recorded subdivision plan that encompasses the house lot and the building lot, recorded on August 29, 1979, which shows three lots: Lot 2 is the house lot and has 12,241 sq. ft.; Lot 3 is the building lot and has 15,960 sq. ft., and Lot 1 is the neighbor's lot.

Exhibit A2 was the Zoning Ordinance dated January 1978 which established lot area requirements. The minimum lot size at the time when the subdivision plan was recorded was 10,000 sq. ft. and the average lot size was 12,000 sq. ft. The Township's current Zoning Ordinance adopted in 1989 sets the new lot area requirements for the R-2 district at 25,000 sq. ft. Mr. Keller stated that he has not taken any steps to reduce the lot area of his building lot. The only thing that has changed since the Kellers purchased the building lot was the adoption of a new Zoning Ordinance which increased the minimum lot area. That change created a hardship because it basically rendered what previously was a viable building lot into a lot that is now too small for any use.

Exhibit A3 are pictures of the house lot (picture A), the building lot (picture B), and the neighbor's lot (picture C) showing a split rail fence which was placed to delineate the property boundaries. Picture E shows the two separate driveways, one on the house lot and the other on the building lot. Picture F is the open space to the rear of the building lot where someone could potentially build on.

Mr. Yoder questioned Mr. Keller as to whether the house lot and building lot are considered separate tax parcels. Mr. Yoder presented Exhibit A4 which are copies of two separate property tax bills, and Exhibit A5, copies of two separate school tax bills, one for 1836 Stony Battery Road and one for 1840 Stony Battery Road. Mr. Yoder asked if during any interaction with West Hempfield Township were these two properties always treated as separate lots? Exhibit A6 is correspondence from Ron Youtz, Township Manager, in regard to road work being done in front of the properties and Mr. Keller received a copy of the same letter for each property.

Exhibit A7 was presented which were copies of fire hydrant/street lights bills for each lot for this past year. Mr.

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Yoder stated that in all instances this property has been treated as two separate lots in terms of taxes, fees and correspondence. Mr. Keller answered yes to all questions and stated that this set-up did not change when the Zoning Ordinance was amended.

Mr. Yoder questioned that other than the lot size being less than what is permitted under the current ordinance, could a single family house be constructed and still meet the other setback requirements. Mr. Keller said yes and Exhibit A8 was presented which is a copy of the subdivision plan. In the picture Lot 3 does not have a house on it but Mr. Keller sketched in the footprint of his house within the setback requirements in order to show that a house could be constructed on Lot 3.

Mr. Yoder asked that if the Zoning Board were to grant a dimensional variance for the lot area requirements, would it be inconsistent in any way with the surrounding properties. Exhibit A9 was presented which is a map of the neighborhood and shows the Keller's house lot. The neighborhood consists of over 200 homes in the R-2 Residential Zoning District which were laid out prior to the current Zoning Ordinance. Mr. Yoder stated that for all 200+ homes, every lot is less than the minimum lot area required under the current Zoning Ordinance.

Mr. Yoder questioned whether Mr. Keller knew if in the past the Zoning Hearing Board had considered properties that were subject to a zoning change if the lot area was non-conforming or too small. Exhibits A10 and A11 were Zoning Hearing Board minutes detailing similar cases in the R-2 Zone with a lot which was too small to build on in light of the Zoning Ordinance change. The Ordinance that was enacted created a hardship by rendering what previously were permitted lots and met all the requirements of the ordinance into lots that are now considered non-conforming because of that change.

The next questions Mr. Yoder had for Mr. Keller related to the legal wording in a variance. In regard to the Keller case, is there a unique physical condition of the building lot that rendered it non-conforming as to lot size when the 1989 Zoning Ordinance went into effect? Would Mr. Keller agree that because of the lot size there is no possibility that he can develop it and remain in strict conformity with the current Zoning Ordinance and that a variance is necessary to enable the reasonable use of the property? Would Mr. Keller agree that he did not do anything to create this hardship but that it was caused by the change in the Zoning Ordinance? Would he also agree that if the variance is granted it would not alter the essential character of the neighborhood where the Keller's house is located? Would Mr. Keller agree that this request represents the minimum variance necessary to afford relief and to build a house on the lot? Mr. Keller answered yes to all the above questions.

The last two questions related to Mr. Yoder's request to extend the time to issue a zoning permit to do any construction on the lot if the Board grants the variance. Mr. Yoder asked if the Keller's intention to move to Brethren Village is completely finalized or are they waiting for a unit to open up for them? They would like to request from the Board a 12-month extension for the zoning permit in order to have construction completed. Mr. Yoder then stated that he had no further questions for Mr. Keller.

Mr. Crocamo asked if the only changes that occurred on the property were the change in the Ordinance and when the garage on Lot 3 was constructed. Mr. Keller stated that the garage was built in 1985 and that it was used for storage and parking. Mr. Crocamo questioned about having a garden on that lot as well. Mr. Yoder corrected Mr. Crocamo in that the Kellers did not make any changes to the size of the building lot and that both the garage and the garden were there prior to the zoning changes. Mr. Keller stated that currently there is an additional smaller storage building on the lot.

Mr. Lintner questioned the two exhibits A10 and A11 Zoning Hearing Board meeting minutes where there similar cases involving contiguous lots that were not sized properly and were given relief? Mr. Yoder stated that the estate

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properties were, but he wasn't sure about the other one. Mr. Yoder is trying to prove that this has been a recognized issue that the Board has dealt with in terms of R-2 lots that were created prior to the adoption of the current Zoning Ordinance, which subsequently rendered hundreds of homes in the Township non-conforming as to lot size.

Mr. Peck questioned about the two driveways being connected and Mr. Yoder stated there is a turn-around area at the end of one for safety purposes. It was also stated that both driveways were paved prior to the Kellers purchasing the home or the building lot. These houses were model homes built for the development behind their property and the driveway on the building lot was used for when people came to look at the model homes.

Ms. Hohenadel questioned whether the building lot had public water and sewer at this time. Mr. Keller stated there is nothing currently on the lot to warrant water and sewer, but water and sewer lines are at the front of the property and would be available for hook up.

Motion: Daryl Peck moved, seconded by Tony Crocamo, that the exhibits A1 through A4 1-11 as well as the exhibits from last month's meeting be entered into evidence. Carried 3-0.

Mr. Yoder made his closing statement with three points highlighted: 1) the court cannot take away what was previously valid and of value and now render it useless; 2) it is well established that the mere common ownership of the adjoining lots does not automatically establish a physical merger of those lots for the purpose of determining whether those lots comply with the zoning requirements, and 3) the development map with 200+ houses shows that they are not conforming lot sizes under the current Zoning Ordinance. Mr. Yoder stated that there is no harm in allowing a house to be built on this lot and feels that since the Township has not taken a position on this, and no neighbors have come forward, it would pose a real unfairness on the Kellers as they are preparing to move. Mr. Yoder asked that the Board grant the dimensional variance and allow the Kellers to sell the property as a building lot.

Gary Lintner asked about the permit for the garage that was put on the building lot. Exhibit 5 was the permit application and Exhibit 6 was the actual permit that was issued to build the garage.

Motion: Daryl Peck moved, seconded by Tony Crocamo, to close testimony on Case 1204. Carried 3-0.

Motion: Daryl Peck moved, seconded by Tony Crocamo, that the Board confer with counsel and render a decision at the next meeting on June 9, 2015. Carried 3-0.

**Case 1208 – Sue Blake**

Mrs. Sue Blake and Mr. Robert Blake, 3261 Marietta Avenue, Lancaster, PA 17601, were both sworn in to provide testimony. Mrs. Blake is requesting a variance for a front yard fence because the ordinance states that a fence cannot be higher than 3'. Mrs. Blake wants to erect a 5' fence to prevent her dog from going out on to the road. The fence will be lower than the elevation of the road and it will not impede sight lines. The house is very close to the road. On the east side of the property, the 5' fence would be 6' below the road. The Blakes want to install a split rail fence with wire mesh so it will be open and not obstruct the view. Mr. Lintner questioned whether the fence would be placed on the entire length of the road frontage of the property. The Blakes stated that on the west side of the property the fence will be in line with the house and on the east side it will be installed from the addition to the front of the house. The fence will either be in line with the house or behind it.

Mr. Lintner emphasized that the Township does not want the Blake's dog to be on the road or be able to attack someone going by the property. The fence will be low so that anyone driving past will not be able to see the fence.

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Motion: Daryl Peck moved, seconded by Tony Crocamo, to grant a 2' variance to section 701.4 requiring a maximum of 3' fence, and allow the applicant to install a 5' fence for the road frontage of the property. Carried 3-0.

**Case 1209 – M & G Realty**

Neil Metzger with LSC Design, 320 North George Street, Ste. 100, York, PA 17401, was sworn in to provide testimony. M & G Realty is the real estate holding company for Rutter's Farm Stores. Rutter's would like to add a diesel fuel price sign at its existing facility at 3849 Hempland Road, Mountville, PA. This facility sells both automobile diesel and truck diesel, which is slightly higher in price than automobile diesel. The sign request is to display the truck diesel price at the truck fueling area. The auto diesel price is listed on the normal fuel pumps. M & G has requested a variance to Section 708.3.A.1 for the dimensions of business signs. The ordinance states that one business sign per street frontage is allowed, but the ordinance limits the total number of building signs and free standing signs at four per lot. This Rutter's store has three street frontages.

Mr. Metzger stated the business signs with Rutter's logos are mounted on the existing store facing College Avenue at Stony Battery Road and on Hempland Road. In addition to these two signs there are two free standing business signs, one along College Avenue and one along Hempland Road. Mr. Metzger said that the ordinance individually permits three of each type of sign but only allows four.

Mr. Metzger showed a picture of the sign which does not have the Rutter's logo on it. It displays the truck diesel fuel price. If the variance is granted the sign will be mounted on the far western end of the north side of the diesel canopy where the diesel trucks enter, facing Route 30. The truck drivers would be able to see the sign from both the eastbound and westbound exit ramps of Route 30, as well as from the southbound direction on Stony Battery Road.

Ms. Hohenadel questioned how many building signs are permitted and how many this Rutter's store actually has. Mr. Metzger stated that the ordinance permits one sign per street frontage, so technically Rutter's is permitted three signs because it has three street fronts. The store currently has two signs however there is a total of all signs that falls under business signs or identification signs which is two but if a corner lot being four.

Mr. Peck questioned whether Rutter's could add the truck diesel fuel prices to the existing fuel price sign. Mr. Metzger stated that doing this would make the height of the existing sign too high and then a height variance would be necessary.

Mr. Lintner stated that the application needs to be amended to reflect the correct Zoning Ordinance section number – it should be a variance from Section 708.9 Table 2 Part A -- Maximum Total Permitted Number of Signs. Rutter's is requesting relief to have a total of five signs and the ordinance allows for only four business signs on the site.

Motion: Tony Crocamo moved, seconded by Daryl Peck, to grant a variance to Section 708.9 Table 2 Part A to allow a fifth business sign at the property at 3849 Hempland Road with the condition that it be constructed according to testimony. Carried 3-0.

There being no further business to come before the Board, the meeting was adjourned at 9:20 P.M.

Respectfully submitted,

  
Tony Crocamo