

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

**WEST HEMPFIELD TOWNSHIP ZONING HEARING BOARD
December 9, 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, December 9, 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 Matt Creme, Solicitor; Amanda Longmore, Court Reporter; Jodi Heffner, Zoning Officer; and Marsha Beamenderfer, Recording Secretary.

Minutes

Chairman Lintner requested a change to page 3, paragraph 4, last sentence. He recommended changing the word slower to volume lower.

Motion: Daryl Peck moved, seconded by Tony Crocamo, to approve the minutes as amended for the meeting held November 11, 2014. Carried 3-0.

Case 1199 – Jack D. Mason

This application was submitted by Jack D. Mason, 680 Eagles View, Lancaster PA for a Special Exception to Section 702.9 to allow an addition of 618 square feet to be used for Echo Housing on his property zoned R-2.

Paula Walters, 627 Eastside Drive, Landisville, PA daughter of the applicant, and Gary Kunkle, contractor, 3 Charles Place, Brownstown, PA were both sworn to provide testimony.

Ms. Walters stated that her parents have retired and are planning to spend the majority of their time in Florida and do not want to maintain a residence in Pennsylvania. Ms. Walters would sell her existing home, purchase her parent's home and build in-law quarters (Echo Housing) for her parents to use when they are here in Pennsylvania, and for her to be able to care for her parents as they age.

Mr. Lintner stated that due to the shape of the lot, none of the zoning setbacks would be violated.

It was determined the property is served by public sewer and public water.

Mr. Lintner questioned the parking issue. Ms. Walters provided the board with Exhibit 1 which is a plot plan showing the two car garage with a large driveway. She stated her father only has one car. She added they would use the garage for his vehicle and one of their own with their second vehicle parked in the driveway.

Mr. Peck questioned whether the 600 square feet of the addition included the basement. Mr. Kunkle stated that the basement would not be living space. It would be a daylight basement and not part of the 600 square feet of living space and would not have access from inside the unit. Mr. Lintner stated that the most important condition that comes with Echo Housing is the use of a cooking appliance, which would have to be removed within 120 days after use, and that the unit cannot be used as a separate residence.

Motion: Daryl Peck moved, seconded by Tony Crocamo, to approve a special exception to Section 702.9 to allow Echo Housing at 680 Eagles View, Lancaster with the following conditions: 1) All construction be carried out as described before the Board; 2) Annual letter be sent to Zoning Officer while in use; 3) Cooking appliance be removed when no longer in use. Carried 3-0.

Case 1200 – George M. and V. Lorraine Lewis

This application was submitted by George M. and V. Lorraine Lewis, 1725 Clear Springs Road, Mount Joy, PA as an appeal from the decision of the Zoning Officer regarding the remaining subdivision rights for their property zoned Rural Agricultural.

Dwight Yoder, Attorney, was present to represent the applicant. Josele Cleary, Attorney, was present to represent the Township.

Mr. Yoder stated the Lewises' property was created by a subdivision in the early 1980s. He added that there were five rights per this subdivision; two were assigned to the Lewises and three remained with the parent tract. Mr. Yoder stated that the Township said the second right for the Lewises was extinguished, but the Lewises maintain that one right was used and that one right remains.

Mark Magrecki, a registered landscape architect with Penn Terra Engineering Inc. 3904B Abel Drive, Columbia, PA was sworn to provide testimony.

Ms. Cleary objected to Mr. Magrecki testifying, stating that there is no need for expert testimony and that his opinion is irrelevant. Mr. Yoder responded that Mr. Magrecki will also relay historic facts related to the property. He added that the Board could not determine relevancy until they hear his testimony.

Ms. Cleary stated that the issue before the Board is what is meant by the condition of the Conditional Use approval which stated that it constituted usage of two of the rights of subdivision. She stated that the rights the Lewises have were determined by the Conditional Use allowing the creation of an oversized lot, and not by any notes placed on a subdivision plan. She added that the history of the property has already been heard at a previous hearing and she would request that the Board take notice of the previous testimony.

Mr. Yoder stated that since this was a new application and new case, the history would have to be part of the new record. The Board agreed to allow Mr. Yoder to present his case, and they would decide relevancy as testimony is presented.

Mr. Yoder presented Applicant Exhibit A-2 which Mr. Magrecki agreed was a copy of the deed to the Lewis's property at 1725 Clear Springs Road, consisting of 5.25 acres.

Mr. Yoder presented Applicant Exhibit A-3 which Mr. Magrecki agreed was a copy of a preliminary subdivision sketch that he prepared for the Lewises. Mr. Magrecki agreed that the sketch depicted the proposed subdivision of the 5.25 acres owned by the Lewises into two tracts. Further testimony indicated the Lewis property was subdivided from a tract of 121 acres owned by Josie Buckwalter in February 1983.

Mr. Yoder presented Applicant Exhibit A-9 which is a copy of an excerpt of Section 301.3.1.A of the Zoning Ordinance dated January 1978. It was noted that this Section states that one subdivision right could be granted for every 25 acres which gave Mr. Buckwalter five rights of subdivision.

Mr. Yoder presented Applicant Exhibit A-5 which is a copy of the subdivision plan recorded with the Lancaster County Recorder of Deeds February 28, 1983 which originally created the Lewis tract. Mr. Magrecki read Note Seven of this plan into the record.

Mr. Yoder presented Applicant Exhibit A-4 which is a copy of the Conditional Use hearing proceedings for the Buckwalter subdivision. Ms. Cleary objected to Mr. Yoder's question regarding how many subdivision rights were assigned to the Lewis property on the subdivision plan. She stated that the subdivision plan did not assign any rights. The Conditional Use hearing established the decision regarding the number of rights.

Mr. Creme interjected and stated that it appeared there would be a continuation of disagreement regarding the choice of words that were used in each document. He stated that, if this case is to be decided only by written words on a plan or in a decision, then Ms. Cleary is correct that the record speaks for itself. He stated that if the Board is going to consider what might be looked at if this were a law or some type of legislature, then both parties will have to be heard.

Ms. Cleary stated that Commonwealth Court says that interpreting a condition on a Zoning Hearing Board decision is the same as interpreting a provision of the Zoning Ordinance. She added that this Court has also said that the same would apply to conditions placed by a Conditional Use or Special Exception. She stated the Conditional Use allowed them to create a lot they would not otherwise have been able to create, with the condition stating that the creation of the lot constituted the usage of two lots.

Ms. Cleary stated that a note, not written by the Board of Supervisors, but approved by the Lancaster County Planning Commission has no relevance. She added that the only relevancy is the Conditional Use decision in Applicant Exhibit A-4. She stated that Note Seven on the subdivision plan was not approved by the Board of Supervisors or placed on the plan by them.

Mr. Lintner pointed out that the date of the Plan with Note Seven is February 28, 1983 and the Conditional Use decision is dated 1982. Ms. Cleary stated the note was added after the Conditional Use hearing, since it cites the decision. Therefore, the Supervisors could not have had the note before them when they made their decision.

Mr. Yoder argued that the Subdivision Plan is relevant because the current Zoning Ordinance states that the Subdivision Plan controls the rights of subdivision. Ms. Cleary responded that the Ordinance that was in effect in 1982 had different provisions than the current Ordinance. She stated that the Note placed on the Plan used different language than what was used in the Conditional Use decision, and stated the Note cannot be binding to the Township since it was placed by the applicant and was never approved by the Board of Supervisors. Ms. Cleary stated that it is the Township's position that the motion made at the Conditional Use hearing provides what the conditions are and is the official action of the Supervisors.

Mr. Yoder responded that the Zoning Hearing Board needs to look at all of the minutes and all of the conclusions that were part of the Conditional Use hearing and that these parts cannot be excluded. Mr. Lintner pointed out that in previous Zoning Hearing Board cases the motion for approval was the binding decision of those cases along with the conditions listed in the approval. He stated that even though other things may have been discussed or mentioned in testimony, those items were not binding if they were not included as a condition in the motion. Mr. Yoder stated that conclusions are part of the decision.

Mr. Yoder presented Applicant Exhibit A-7 which is a copy of a letter dated September 24, 2014 which he sent to West Hempfield Township. He also presented Applicant Exhibit A-8 which is a copy of a letter dated October 3, 2014 which the Township sent in response to his letter. Both letters were in regard to the number of subdivision rights the Lewises had for their property.

Mr. Yoder presented Applicant Exhibit A-6 which is an excerpt from the current Township Zoning Ordinance. Mr. Yoder pointed out the section that states the recorded subdivision plan identifies which lot carries any future right of subdivision. Ms. Cleary stated that this provision in the Ordinance was added long after the Buckwalter subdivision was recorded and has no bearing. Mr. Lintner agreed with Ms. Cleary.

Mr. Yoder stated he had no further testimony to present from his witness, and Ms. Cleary stated she had no questions for Mr. Magrecki.

Mr. Yoder stated that he thought this case was largely a matter of legal analysis and requested that all Exhibits be admitted into evidence.

Ms. Cleary stated that the Township believes that the record is based on the documents and that the County subdivision plan cannot change the Conditional Use decision. She stated the Board should consider the documents before them and the entire text of the Zoning Ordinance in effect in 1982 which is very different from the current Ordinance.

Mr. Yoder said that there is a rule in the Municipalities Planning Code that states when there is a provision that is unclear, the Zoning Hearing Board has to construe in favor of the property owner to grant the property owner the broadest use of their property. He stated the language of the existing documents is not clear about what is meant and appear to contradict each other. He added that the language of the decision does not clearly state that two subdivision rights were extinguished when the Lewis lot was created, but says that two of the five rights go to the Lewis property.

Ms. Cleary stated that Mr. Yoder's opinion is that Mr. Buckwalter had five lots to create from the subdivision of his parent tract, and the Supervisors said they were taking one of the five lots he could create and giving it to the Lewises. She stated that the decision of the Supervisors stipulated that the creation of the Lewis lot, as an oversized lot, was a two lot usage. She stated the Township is disputing the number of rights the Lewises have because of precedential value, in that it sets a precedent for all other properties in the Township.

Mr. Lintner stated that the Board member, who made the motion at the Conditional Use hearing, could have been brought in as a witness to clarify the intent of the language of the motion made at that hearing. Ms. Cleary stated that the motion was voted on by all five Board members, not just the maker of the motion.

Mr. Lintner stated that he was not prepared to make a decision on this case at this time.

Mr. Creme stated if the applicants agreed, a decision could be rendered at the meeting of February 10, 2015. He stated the Board would meet on January 13, 2015 for a quasi-judicial deliberation of this case. It was decided that legal representatives should submit written legal arguments and/or memorandums of law to Mr. Creme by January 6, 2015. Mr. Yoder stated that the applicant would grant an extension for the Board to make a decision by the end of February 2015.

Motion: Daryl Peck moved, seconded by Tony Crocamo, to accept Applicant Exhibits A1 through A9 as part of the record. Carried 3-0.

Motion: Gary Lintner moved, seconded by Tony Crocamo, to close testimony on Case 1200 and to render a decision no later than February 28, 2015. Carried 3-0.

Case 1201 – Good Transport Services Inc.

This application was submitted by Good Transport Services, Inc. 4668 Breezyview Road, Columbia, PA for a special exception to Section 501.2.B.1 to expand the hours of operation and increase the number of employees for their business property zoned I-1

Daniel Good, 301 Spring Hill Lane, Mountville, PA was sworn in to provide testimony.

Mr. Good stated that they had received prior approval for a new shop building in the year 2000 to expand the amount of work their mechanics could perform. He stated that they never carried through with construction of the new building. He is requesting a Special Exception to Section 501.2.B.1 to expand the hours of operation to more efficiently use the existing shop building. The proposed hours of operation would be expanded to

4:00 AM to midnight, up from the current hours of 7 AM to 5:30 PM. Mr. Good stated three mechanics would work from 4 AM to 2:30 PM, three mechanics would work from 1:30 PM to midnight, and eight mechanics would work the current shift of 7 AM to 5:30 PM. Mr. Good amended his application to reflect a starting time of 4:00AM rather than the 5:00AM that was stipulated in his application.

Mr. Good added that they want to expand the number of employees to 22 from the current staff of 16.

Mr. Good stated their trucking business is licensed to haul anything, but they choose to haul bulk feed which they deliver to farms and farm stores. He stated they have a fleet of 40 trucks, but only one-third of the fleet is serviced in Columbia.

Mr. Good added that in 1995, they opened their shop to outside customers to broaden their base and to give them other opportunities for revenue. Mr. Lintner questioned the amount of work done that is their own and how much is customer work. Mr. Good stated that approximately 25% of the mechanics work is on Good Transport vehicles and 75% is on vehicles owned by customers.

Mr. Lintner questioned if there has ever been any objection to noise at the business and whether the bay doors are open during summer hours. Mr. Good stated that the workers prefer to have the doors closed after dark because of insects. He added there are no refrigerator units running and no generator noise and that they abide by the State Regulation of a 5 minute only idle rule.

Motion: Daryl Peck moved, seconded by Tony Crocamo, to grant a modification to previously imposed conditions for the operation of Good Transport Services at 4668 Breezyview Road, Columbia to provide for hours of operation from 4:00AM to midnight. Carried 3-0.

Motion: Daryl Peck moved, seconded by Tony Crocamo, to grant a modification to previously imposed conditions for the operation of the same named property to increase employee its base to a maximum of 22. Carried 3-0.

Case 1202 – Daniel Murphy

This application was submitted by Daniel Murphy 100 Acanthus Street, Marietta, PA for the following variances: 1) Section 403.2.A to allow a mini-warehouse with a maximum 45,000 square feet; 2) Section 403.3.B.3.b to allow minimum landscape area of 20%; 3) Section 403.3.B.3.c for rear yard setback; 4) Section 403.3.C.3.d to allow maximum building size of 15,000 square feet; 5) Section 707.4 for required number of parking spaces; and 6) Section 1005.4.G for one year time exception for property currently owned by Warren W. Diffenderfer Trust located at 3510 Marietta Avenue, zoned Traditional Village.

Daniel Murphy 100 Acanthus Street, Marietta, PA and Rob Murphy, 604 Chatham Way, Lititz, PA were both sworn in to provide testimony.

Daniel Murphy stated that he, his brother Rob Murphy and their mother are under contract to purchase 5.25 acres of land at 3510 Marietta Avenue with the intent to develop 3.66 acres into a safe and secure mini self-storage facility with five buildings containing approximately 350 mini storage units. He added that a second agreement on this property would subdivide 1.59 acres to another owner.

Mr. Creme explained party status to others at the meeting. The following were present and requested party status: 1) Raymond Brunner, 6270 Lemon Street, East Petersburg, PA who owns the property at 3540 Marietta Avenue and 2) William Edkin, who owns the property at 3498 Marietta Avenue.

Motion: Gary Lintner moved, seconded by Tony Crocamo, to accept the two gentlemen as parties of interest in this case. Carried 3-0.

Daniel Murphy reviewed a plot plan which showed the location of the property as well as neighboring properties. Mr. Murphy explained further that this property would be entered from Marietta Avenue with a few parking spaces at the office, nice landscaping and some sight from the road. Mr. Murphy also stated a mini-storage facility would be beneficial to the community to alleviate storage issues that property owners encounter especially in areas where storage sheds are not permitted.

Daniel Murphy reviewed his variance requests.

Gary Lintner expressed concern about the outside storage and questioned what they would do if someone comes in with large recreational vehicles. Mr. Murphy explained that they would create parking in the rear with landscaping to help hide larger items, and one of the buildings would be big enough to house some of these large items.

Mr. Lintner stated he also has a concern about the reduction of the rear setback.

Mr. Creme then discussed some of the issues of the case. This plot is in the Traditional Village District, and some of the requests that have been made as variances are in the Traditional Village District Conditional Use requests for modifications. The Zoning Board does not have jurisdiction over the Conditional Use. The Board of Supervisors would make those decisions.

Mr. Creme also stated that to grant a use variance the Board must determine that the property cannot be put to any other use. Mr. Lintner stated that the request for a use variance was a major road block because the Zoning Hearing Board is held to what the Zoning Ordinance stipulates.

Mr. Peck stated that there was no hardship to grant a use variance and he thought this type project did not belong in the Traditional Village Zone.

Motion: Daryl Peck moved, second by Tony Crocamo, to deny the variance request to Section 403.2.A to allow a mini-warehouse in the Traditional District at the property at 3510 Marietta Avenue. Carried 3-0.

It was determined that because the use variance was denied the other variance requests would be null and void.

Mr. Creme informed the applicant that they have 30 days to appeal the Board's decision. He also stated that they would receive a written decision within 45 days.

There being no further business to come before the Board, the meeting adjourned at 10:15pm.

Respectfully submitted,



Daryl S. Peck
Secretary