

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

**ZONING HEARING BOARD MEETING
January 12, 2016**

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, January 12, 2016. Gary Lintner called the meeting to order at 7:30 P.M. Board members Daryl Peck and Tony Crocamo were also present, along with Bernadette Hohenadel, Solicitor; Rhonda Adams, Court Reporter, Jodi Heffner, Zoning Officer; and Marsha Beamenderfer, Recording Secretary.

REORGANIZATION: The first order of business was to organize the Board for the year 2016.

Motion: Daryl Peck moved, seconded by Tony Crocamo, that all board members retain their current positions for the year 2016. Motion carried 3-0.

Motion: Tony Crocamo moved, seconded by Daryl Peck, to keep the same meeting schedule of the second Tuesday of the month at 7:30 PM with the exception of November 8, 2016, the date of the Presidential election. The decision was made to hold the November meeting on the third Tuesday, November 15, 2016. All meetings will be held at the Township Building for the year 2016. Motion carried 3-0.

Minutes

Gary Lintner discussed a few points of correction to the December 8, 2015 meeting minutes and all corrections were made.

Motion: Daryl Peck moved, seconded by Tony Crocamo, to approve the minutes as amended for the meeting held December 8, 2015. Motion carried 3-0.

Case 1219-Norman & Marilyn Welch-continued

The Welches, who are still under oath from the December 2015 meeting, presented a map (Applicant Exhibit 3) with measurements of the property at 150-152 Franklin Road, Columbia. Mr. Welch said that 35.5 feet is the closest measurement to the center of the road. Franklin Street runs east-west and Franklin Road runs north-south. Mr. Peck said that to the north of the structure is Franklin Street and to the east of the structure is Franklin Road. Mr. Welch stated that the area with lines on the map is the flood way, which indicates moving water during a flood. The grey area is the flood zone, which indicates still water during a flood. Mr. Lintner speculated it would be a 100-year flood plain designation.

Mr. Lintner asked what the measurement was up to the flood zone. Mr. Welch said that according to the scale it was approximately 16 feet. Mr. Lintner said this speculation of measurement would not do. Ms. Heffner stated that the building could be situated up to the flood plain but not in it. Mr. Lintner asked if the Welches could move the house the required number of feet back to the edge of the flood zone, thereby reducing the amount of relief required on the other side of the home. Ms. Heffner said that is correct.

Information from previous testimony indicated that the Welches would like to use the existing foundation location for the house to be built. Mr. Welch stated that Blue Rock Flood Services, the company that did the map work for them, said that the flood plain shown on the official map has a line which indicates the center of the flood plain. The width of that line comes up to just behind the house. If the Welches place the house any further back they would have to come before the Zoning Hearing Board to ask for a variance because on the official map the width of the line is 20 feet. Mr. Lintner commented that without anything official in writing, this information from Blue Rock could be considered hearsay. Ms. Hohenadel agreed with Mr. Lintner's observation. He said that in the interest of reducing the relief needed, the house should shift as much as it possibly can to be as close to the flood plain. In order to do this an official measurement is necessary.

Mr. Peck pointed out that in previous testimony, the Welches stated they want to move the house as far back from the street as possible. Mr. Lintner wished that the Welches had given the Zoning Hearing Board something official to go by for what that dimension is, and not just say that it is 20 feet. Mr. Lintner said if it is only 1 foot then it is not worth arguing

over, but if it is 20 feet then the Board could extend the distance on this side, reduce the amount of relief, and the house would still be out of the flood plain. Ms. Heffner said that the GIS map included in the original packet shows measurements of 130 feet, 116 feet and 104 feet from the property line to the flood plain. These measurements are what the Township goes by and the Zoning Ordinance states that the building needs to be situated completely out of the flood plain.

Ms. Hohenadel questioned whether Franklin Road is classified as a local street. Ms. Heffner said it is considered a State collector road and any structure built on it needs to be 60 feet from the right-of-way line. Mr. Peck stated that the maximum relief would be 24.5 feet for Franklin Road and 17 feet for Franklin Street. The original house was built in 1900 and there seems to have been no vehicular or traffic issues with the house's proximity to either road.

Mr. Lintner asked the Welshes if they could contact Blue Rock Flood Services to obtain an official measurement as to the location of the flood plain. In the interest of due diligence, he said the official measurement would then be on the record and could be used for future reference should any zoning issues arise regarding the property. Ms. Hohenadel pointed out that the Board would have to leave the record open in order for the Welshes to fulfill Mr. Lintner's request to obtain the measurement and bring it back to the Board, and did they really want to do this? She deemed it unnecessary for the Welshes to have to do this in order for the Board to make a decision at this meeting. Ms. Heffner pointed out that the official measurement regarding where the flood plain is would have to be on the building permit. Ms. Hohenadel said the map the Welshes provided and the GIS map both show that the proposed building is clearly not in the flood plain. The GIS map shows that the proposed house is right on the edge of the flood plain, and Applicant Exhibit 3 map shows the proposed house as approximately 12 to 15 feet away from the flood zone.

Mrs. Welch said PennDOT came out and measured for the driveway and told the Welshes they would not be able to use both driveways. PennDOT will probably approve the driveway on Franklin Street. Mr. Lintner asked what type of traffic control was at the intersection. Mr. Welch stated that there are stop signs if traveling east on Franklin Street or if traveling south on Oswego Drive. A person traveling north on Franklin Road does not have a stop sign.

Mr. Peck asked for clarification regarding the wording on the application for the proposed building project. Reading from the definition section of the Township Zoning Ordinance, Ms. Heffner said the dwelling will be "one single-family semi-detached building that contains two dwelling units, each accommodating one family, which are attached side-by-side through the use of a party wall and each dwelling unit having one side yard."

Motion: Daryl Peck moved, seconded by Tony Crocamo, to grant a variance to Section 402.2.A to allow construction of a single family semi-detached dwelling unit on the property at 150-152 Franklin Road, with the condition that the structure is situated as set forth in Applicant Exhibit 3 in relation to the flood plain on the property. Motion carried 3-0.

Motion: Daryl Peck moved, seconded by Tony Crocamo, pursuant to Section 402.4.A.2 to grant a variance of 17 feet to the setback requirement of 60 feet to the north on Franklin Street. Motion carried 3-0.

Motion: Daryl Peck moved, seconded by Tony Crocamo, pursuant to Section 402.4.A.2 to grant a variance of 24.5 feet to the setback requirement of 60 feet to the east on Franklin Road. Motion carried 3-0.

Case 1220-John S. Forry, 153 Amsterdam Road, Lancaster

John S. Forry was sworn in to provide testimony about the property at 1510 Silver Spring Road, Mount Joy. He has owned with James S. Forry, his brother, since 1974. It is a piece of the family farm on which they grew up. James Forry is now hospitalized and his debts are mounting, so the brothers would like to liquidate their assets.

For the record and in order to clarify which parcel is being discussed, Ms. Hohenadel asked about the location of the lot. It is on Silver Spring Road closer to Nolt Road and is approximately 15.7 acres. She said it appears that several lots have been taken out of the parcel along Silver Spring Road. Mr. Forry answered yes.

Mr. Forry is asking to subdivide the property in half to be able to sell his brother's portion. He said that one parcel will be slightly larger than half so that when it is sold, that money will cover the surveying and site preparation costs. Mr. Lintner

questioned how the property would be subdivided. Mr. Forry stated that they would like to make an east-west division, with one part in a rectangular shape and the other part in an "L" shape or flag piece. Mr. Forry pointed out there is one building currently situated on the property, a mobile home that his brother lived in prior to going into the hospital. There are tenants now in the mobile home but they have no interest in purchasing the property. Mr. Peck asked if the mobile home was the only structure on the property and if the remainder was farmland. Mr. Forry said yes; additionally there is a softball field presently on the land.

Mr. Lintner said that because the lot in question was created in 1974, it is a non-conforming lot size in the Rural Agricultural zone but is grandfathered under the current Zoning Ordinance. Ms. Heffner confirmed that in the RA district a residential lot can be a maximum of 2 acres and a non-residential lot can be a maximum of 3 acres. She said Mr. Forry wants to create two lots of approximately 7.5 acres each.

Mr. Lintner asked Mr. Forry what is proposed for the subdivided properties. Mr. Forry stated that on the "L" shaped portion that he owns, he is planning to remove the mobile home at some point but does not have a specific timeline for doing so. Mr. Forry did not know what a prospective buyer of the rectangular lot would do with it because as yet there is no buyer. Mr. Lintner asked if Mr. Forry intended to keep the L-shaped lot and if his brother would sell the other half. Mr. Forry said yes.

Mr. Lintner noted that the subdivision would not be exactly in half because Mr. Forry needs to sell one larger portion to pay for the surveying costs and to cover the costs of his brother's needs. Mr. Lintner said that with 15.7 acres, there is the possibility of five conforming lots. Ms. Hohenadel said no, there is a limitation to the number of subdivisions allowed and Mr. Forry would not be able to further subdivide the parcel into smaller lots without seeking approval of the Zoning Hearing Board. Mr. Peck questioned which lot, the larger lot or the smaller lot, would be listed as the parent tract. It was stated that the lot that Mr. Forry retains would be the parent tract.

Ms. Hohenadel said that when the lot is subdivided there are limitations as to what the buyer can do with the lot. Section 301.4.A of the Zoning Ordinance designates that a parent tract size of at least 2 acres but less than 50 acres can be subdivided one time only. The portion of the existing or newly created lot used for residential or other non-agricultural purposes is limited to the maximum lot size, which is either 2 or 3 acres. Mr. Forry stated that he will be getting it surveyed and then the property will be going to auction. He does not know what the buyer will be doing with the lot since he does not have a buyer at the present time. Mr. Forry came to the Zoning Board to see if the property could be subdivided. Ms. Hohenadel said it is the *number* of times the lot can be subdivided, not the *size* of the lots. If Mr. Forry is not sure of the size of the lots, Ms. Hohenadel questioned whether the Zoning Board could make a decision tonight without knowing this information.

Mr. Lintner pointed out that Mr. Forry cannot create conforming lots because of the limitation on the number of subdivisions allowed. Discussion ensued among the Board members about the number of acres that could be included in the variance – if it was a variance of 5.5 acres and he could go up to that, or all the way up to 12.7 acres in order to leave his options open. Mr. Forry repeated that the tract would be subdivided approximately in half, or 7+ acres each. Ms. Hohenadel said he could create only one conforming lot out of the 15.7 acre tract. Mr. Forry is restricted from subdividing the land into 5 three-acre lots. Mr. Peck said in that case Mr. Forry would not be before the Zoning Hearing Board at all if he were creating one conforming lot because he is allowed to do that. Mr. Lintner said he was not sure about this, since the remaining lot would be non-conforming. Mr. Peck said Mr. Forry could do it because, based on the Ordinance, the remaining land is considered the parent tract. If a person has a 100 acre farm and divides one 3 acre lot off it, he does not need a variance on the remaining 97 acres because it is the parent tract.

Mr. Lintner asked Mr. Forry if he was sure about the 15.7 acre number. Mr. Forry said yes. Mr. Lintner told Mr. Forry the Board wants to do the best it can to help him with the plan.

Ms. Hohenadel asked Mr. Forry if he legally represents his brother and if there is an official Power of Attorney. Mr. Forry said yes and he is designated as his brother's agent. Ms. Hohenadel clarified that it is a Durable Power of Attorney which is valid until the death of the principal.

Mr. Lintner felt that having two 7-acre tracts is good because it keeps the land open – the lots could be used for horses or a small business enterprise and this is better than five 3-acre lots (which equates to five houses instead of two). He commented that it is all going to go to houses at some point in time. Mr. Lintner asked Mr. Forry whether he would know in a month or two what his plans are for the property. Mr. Forry said that he would have had the property surveyed, but before doing so he needs to know if the property can be subdivided in half. Mr. Lintner said that when the Board grants a variance it needs to have enough information to understand what is going to result after granting the variance.

Ms. Hohenadel said she does not know if the Board can grant a variance since they do not know what Mr. Forry is doing with the property; therefore, they do not know what variance they are granting. She said if you have 15.7 acres and you want to create a 2 acre residential lot, then you do not need a variance. However, Mr. Forry wants to create more than a 2 acre lot and so he needs a variance for only one of the lots. It is difficult to quantify the variance if the Zoning Hearing Board does not know what the lot sizes are exactly or what the use of the sold parcel will be, and this is problematic in establishing the variance(s). Mr. Peck suggested that the Board condition the variance – that they grant a variance of 6 acres and condition it so that the property must be sold as a residential lot, or a 5 acre variance for a non-residential use.

Ms. Hohenadel again said the problem lies in not knowing the size of the lot being sold. If the Board has to quantify what the variance is, then it cannot be done. Mr. Lintner does not want to condition the variance because then it would lock Mr. Forry in to a specific lot size. He reiterated that he is not comfortable granting a variance to a property that he does not know what is going on it, and he does not know who will own it. If the Board creates a variance, it could limit what the lot can be used for. The lot that Mr. Forry retains would be considered the parent tract, regardless of the size. The Board asked Mr. Forry again if he planned on retaining one of the lots. Mr. Forry again said yes. Ms. Hohenadel pointed out that the lots can either be used for a residence or for farming, nothing else. In answer to Mr. Lintner's question, she read from Section 301.4.A of the Zoning Ordinance, which designates that a parent tract size of at least 2 acres but less than 50 acres can be subdivided one time only for the purpose of "a subdivision to create a farm or farms and a subdivision to change lot lines . . . or the erection of one (1) single family dwelling or other principal non-agricultural building."

Mr. Lintner said he sees the dilemma but he is averse to granting a blanket variance when the lot sizes are unclear. Mr. Forry said he could make a decision right now to make the non-parent tract 8 or 8.5 acres if it will help him to get the variance he needs and still be able to cover his costs. Ms. Hohenadel pointed out that the surveying and subdivision costs for Mr. Forry would be close to \$10,000, provided he can find a surveyor who can do the work in a timely manner.

Mr. Lintner said that the Board almost needs to use "not to exceed" language in the variance so as to not box in Mr. Forry. Ms. Hohenadel said the Board could word it as "not to exceed 8.5 [acres]" and that would give the Board adequate leeway. Mr. Lintner clarified that the parent tract would be 7.2 acres and the subdivision would be 8 acres. Mr. Lintner asked what would be the maximum size of the sold parcel. Mr. Forry replied 8.5 acres. Ms. Hohenadel said in that case it would be a variance of 6.5 acres, going on the low side and provided the lot will be used for a residential property. Mr. Lintner said the Zoning Hearing Board has turned down other applications because there was not a definite plan as to what would happen with the property. He is leaning in that direction on this case – without knowing what is actually going to go in there, how do we do that? If Mr. Forry stipulates he is going to sell it as a residential lot right now, and we say "2 acres" then that is the way it goes.

Ms. Hohenadel asked Mr. Forry when he anticipates having the land survey done. He said as soon as possible. Ms. Hohenadel informed Mr. Forry that it is difficult to obtain the services of a surveying company in Lancaster County due to demand. Mr. Lintner asked him if he had talked to a realtor and Mr. Forry said not yet because the property still needs to be surveyed. In any event the property will be sold via auction. Mr. Forry has not contacted a surveyor or incurred any costs until he finds out if he can subdivide the property. Discussion ensued regarding the value of the property. Mr. Forry said he figured on selling the property for about \$15,000 an acre. It was noted that in West Hempfield Township building lots would sell for much higher than \$15,000 if the land is to be used for a residence.

Mr. Lintner stated that he is not comfortable granting a variance to something that we do not know what is going in there, but if the two other Board members are OK with it, he will go along with the vote. Mr. Lintner said that in the past the Zoning Hearing Board has turned down applications for variances that had far more information than this application does. Not knowing is the dilemma. Mr. Forry asked if the person buying the property would be subject to the Township's

zoning requirements? Ms. Heffner said yes. Mr. Crocamo said if the buyer wants to subdivide further he/she would have to come before the Zoning Hearing Board. The buyer would have to get a variance to do whatever it is he proposes to do, provided it falls within the permitted uses – agricultural or residential. No industrial building or business could be built in the Rural Agricultural district. Not knowing what is going to be built on the property makes Mr. Lintner unsure if the Board can grant a variance at this time. Ms. Hohenadel said the Board does not want to limit the variance to just agricultural or residential because then they are limiting what the buyer is entitled or permitted to do with the property under the Ordinance. Mr. Crocamo said it is his understanding that if the buyer wants to do something other than the permitted uses of residential or agricultural, he/she would need to come back to the Zoning Hearing Board for a special exception to the permitted uses. Ms. Hohenadel said technically there are things that are not considered residential or agricultural but are permitted uses in the RA district. Mr. Lintner hates the idea of granting a variance with the condition of “up to.” Mr. Crocamo said he understands; however, the lot is already one that is non-conforming, and even with the variance of “up to 6.5” [acres], this still makes the two subdivided lots non-conforming but closer to conforming than before.

Mr. Lintner questioned Mr. Forry whether the purchaser of the lot will know what the permitted uses of the property are. Mr. Forry replied yes. Will Mr. Forry know any more of what he is offering in a month or two? Will he have more concrete plans about the property, for example the sizes of the lots? Mr. Forry said he would have come in tonight with the property survey but he was not sure he was allowed to subdivide. Mr. Lintner said one of the requirements to granting a variance is having enough information to understand what is going to result after the Board grants the variance. He does not have an objection with what Mr. Forry wants to do, but he does have a procedural objection on the Board’s side of the table for what they have to do to get to what Mr. Forry wants to do. He does not have a problem with doing what Mr. Forry wants to do on that land; the problem is what the Board has to do to grant that. It is clear that Mr. Forry is going to sell half of the ground, but what is going to be on that ground after he sells it? Ms. Hohenadel asked what it is exactly that the Board wants to know: the sizes of the lots or the ultimate use of the lot for sale based on the limitations to its potential use as said in the Zoning Ordinance? Mr. Forry said if the Board needs to know a size of what the subdivision will be, he can make that decision right now. Mr. Lintner said the problem is Mr. Forry cannot stipulate what the ultimate use is going to be. Depending upon what that use is reflects on how much a variance is needed either for a 2 acre (residential) or 3 acre (agricultural) use. Mr. Forry will not know that until he puts the property on the market. If he stipulates that he is selling it as a residential lot, then he is locked in to that use. He probably does not want to do this because that limits the market to which he wants to sell the property. Mr. Crocamo said that granting a variance up to 6.5 [acres] takes the Board to the same place in terms of granting a variance, whether it is a residential use or an agricultural use. Mr. Lintner said the proper procedure going forward would be if Mr. Forry had a buyer on the hook who said “This is what I am going to do on the property.” Knowing exactly what is going to go on the property is the correct way to go. He does not like granting blanket variances because the Zoning Ordinance was not written that way.

Motion: Tony Crocamo moved, seconded by Gary Lintner, regarding Case 1220 for the property located at 1510 Silver Spring Road, Mount Joy, to grant a variance of up to 6.5 acres to Section 301.3.A.7 to allow the subdivision of the 15.7 parent acre tract into two non-conforming parcels of land.

Mr. Peck said the fact that there has been so much discussion on Case 1220 and so many questions about what the Board is actually approving shows that the Board does not know what it is trying to approve. Mr. Lintner questioned Ms. Heffner if the Township felt that the Board was making the right conclusion and approving what Mr. Forry is asking to do. Ms. Heffner stated that Zoning Ordinance Section 301.3.A.7 was used because no other section was applicable. Another section said that the property needed to be 25 acres and Mr. Forry does not have that much acreage. Mr. Crocamo said it was his understanding that the Township advised the Applicant to take this route, rather than have a buyer on the hook, which therefore makes the Township’s position clear.

Mr. Lintner asked if there was any more discussion of the motion on the floor. Those in favor: 1. Mr Crocamo. Those against: 1. Mr. Lintner. Mr. Peck asked Mr. Forry if he could come back in a month and provide more concrete information on the sizes of the lots as well as what the lot for sale will be used for Ms. Hohenadel stated that as long as the potential use is a permitted use in the Ordinance then the Board cannot limit him from taking this property and using it for a purpose that is permitted under the Ordinance. When Mr. Forry sells the property and if the buyer decides to do something that is a special exception then that person will have to come back before the Zoning Board.

Mr. Peck requested that the Board go into Executive Session with the Board Solicitor to discuss procedural issues. Upon returning Mr. Lintner declared the motion on the table to be dead because it did not receive a third vote. The Board would like to continue this case until the February 9 meeting and have counsel discuss it with her partners at their firm and come up with some avenue of approach that satisfies the Board's concerns for the procedural aspect of the case. Mr. Lintner felt that this would also give Mr. Forry time to come back with anything that might help put this case into more concrete terms. Mr. Forry questioned whether he should go forward with surveying or would he be doing something that he may not be able to recoup the expenses for? Mr. Lintner said he could not say either way as this was Mr. Forry's decision. Mr. Crocamo said having the survey done would give Mr. Forry more information as to what the size of the lots will be, and this is to his advantage.

Motion: Daryl Peck moved, seconded by Tony Crocamo, to continue Case 1220 to the February 9, 2016 meeting when it will be the first item on the agenda and testimony will be left open for any new evidence. Motion 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