

Pequea Township Zoning Board Meeting Minutes January 6, 2015

The members of the Pequea Twp. Zoning Board met on 6 Jan 2015 at 19:00 in the meeting room of the Pequea Twp. Municipal Building.

The meeting was called to order by Chairlady Johns.

Members present Jackie Johns, James Haines, Mark Meyer and Tom Haas with Janice Longer present as council to the board. Robert Mellinger had an excused absence.

Appointment of Officers

Chair: Jackie Johns

Vice-Chair: Robert Mellinger

Secretary: Tom Haas

Appointment of Board Attorney: Janice Longer.

The board will continue to meet on the first Tuesday of each month at 19:00 for 2015.

Old Business

The board approved the 2 December 2014 minutes with a motion by James Haines, seconded by Chairlady Johns.

New Business

The Board will hear an application for Variance from Lancaster Home Builders for a lot which does not meet the minimum lot size. This application is made pursuant to Section 1805 Non-Conforming lots of record, which was amended by Ordinance No.170-2012.

Party Status granted for hearing

Mrs. Bonita Bowman of 1124 Maple Ave, Lancaster, PA 17603

Mr. Richard Bowman of 1124 Maple Ave, Lancaster, PA 17603

Mrs. Colleen Watson of 2412 Raleigh Drive, Lancaster, PA 17603

Mr. Richard Watson of 2412 Raleigh Drive, Lancaster, PA 17603

The Hearing:

Mr. Joe Nadu of Lancaster Home Builders presented the Board with an amended layout plan for the property. Zoning Officer Mark Deimler stated that the lot was created prior to Zoning. Both lots are less than one acre as now required.

1. Applicant Joseph B. Nadu and Lancaster Home Builders is the agent for Bonita and Richard Bowman and Colleen and Richard Watson, who are record owners of the subject property, 271 Shultz Road, Lancaster, Pequea Township, Pennsylvania (the "Property").
2. The subject Property is located in the Agricultural District (Article 5 of the Pequea Township Zoning Ordinance) and is less than one acre. The property has two separate tax parcel numbers and is described on the Deed as two separate parcels, each of which is approximately 15,000 square feet. The sum of the square footage of both tracts is less than one acre.
3. Presently located on tract number two of the Property is one residence with attached garage. The entire property is fenced in. Tract number one is undeveloped and the subject of this Application.

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4. Applicant seeks a variance from the provisions of Section 1805 of the Pequea Township Zoning Ordinance, which provides:

In any zone in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any lot of record not meeting the minimum lot size requirement which was in existence on the effective date of the Ordinance. An undeveloped remainder of an agriculturally zoned parent tract from which all legally-permitted lots have been subdivided shall not be considered a lot of record qualifying for an additional dwelling. For purposes of this section, when two or more non-conforming lots for which a subdivision plan has been recorded, are contiguous and are in single ownership, they become held in common as one parcel. This shall apply regardless of the number of deeds held by the owner, up to the number required to make the lot conforming. Development on non-conforming lots of record shall comply with all yard, height and building area requirements unless a variance is granted by the Zoning Hearing Board.

The variance requested would allow the Applicant to develop the undeveloped tract one by building a residence on that tract.

5. Public notice of a hearing on the application was published and posted in accordance with the requirements of the Pennsylvania Municipalities Code. The proof of publication is contained in the Township's file.
6. On January 6, 2015, a public hearing was held before the Pequea Township Zoning Hearing Board. The Board members in attendance were: Jackie Johns, Chairperson, James C. Haines, Mark Meyer, and Tom Haas (hereinafter "Board"). In addition to the Applicant, the hearing was attended by the Township's Zoning Officer, Mark Deimler and members of the public, including the record owners, Bonita and Richard Bowman and Colleen and Richard Watson. All were invited to sign the attendance book.
7. The following individuals were recognized as interested parties: Bonita and Richard Bowman, and Colleen and Richard Watson.
8. Applicant amended the Application by submitting a new Plot Plan to replace the Plot Plan submitted with the application.
9. In addition to the Application, plot plan and documents submitted therewith, Applicant testified at the hearing, confirming the representations in the Application, the measurements of the front, side and rear yard setbacks, placement of the well and impervious areas. Applicant also described the surrounding area as farmland with one other residence in the vicinity of the subject property.

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10. The Township's Zoning Officer, Mark Deimler, also testified at the hearing and presented an aerial view of the property, which was marked as Township Exhibit 2 and is contained in the Township's files. The aerial view was confirmed by Applicant as an accurate representation of the property as of the date of the hearing.
11. Mr. Deimler presented a copy of the current Deed to the property, which confirmed that the property is described in the Deed as two separate parcels with two separate tax parcel numbers. Mr. Deimler testified that records indicate the lots transferred in 1950 and in 1962 and that there was no Zoning Ordinance nor any Subdivision Ordinance in effect in those years.
12. Mr. Deimler also testified that the lots are currently in use as one contiguous parcel and are fenced as one contiguous parcel. Further, the variance requested by Applicant would result in two lots that are substantially below the minimum lot size for the Agricultural district, which is one acre.
13. The testimony established that one acre is approximately 45,000 square feet and the variance requested by Applicant would result in two lots of approximately 15,000 square feet each. In fact, the entire parcel, at approximately 30,000 square feet, is already under the minimum lot size required in the Agricultural District.
14. Testimony by Bonita Bowman confirmed that the two-tract parcel had been continuously used as one parcel since 1953 and that the fence enclosed both tracts.

I. THE DECISION

The Board adjourned at 19:30 for an executive session and returned at 20:45, with James Haines making a motion to deny the Application for a Variance due to the specific requirements of Section 1805 of the Pequea Township Zoning Ordinance which addresses Non-Conforming Lots, as applied to the property identified as "Track 1 of 271 Shultz Road, parcel # 510-08644-0-0000", in the Agricultural District. With a second by Mark Meyer and all in favor.

BASIS FOR DECISION

The Board considered the purpose and intent of the Ordinance in establishing the Agricultural District and the minimum lot size. The Board expressed concerns that the proposed variance would result in two lots, each of which would be substantially below the minimum lot size of one acre. The Board took notice that the parcel, even with the two tracts together is well below the one acre minimum.

The property has been in use as one lot, with one residence for over sixty years. Based on the testimony presented, it does not appear to the Board that the property was ever used as two separate

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tracts. The fence which surrounds the entire parcel supports the use of the property as one, contiguous parcel. The current owners of record and prior owners have landscaped and maintained the property as a single parcel. Such use can continue in accordance with the ordinance. There is clearly no hardship to the property owner in continuing the historical use of the property.

Moreover, the variance requested by Applicant would result in two non-conforming lots, where there is now only one non-conforming lot. Single family dwellings on lots which are substantially below the minimum lot size would alter the characteristics of the district, as the surrounding land is farmland and fields.

The evidence and testimony offered at the hearing does not establish that the property owners ever intended that the tracts would be separate and distinct from each other. To the contrary, the historical use of the property has been as one, integrated parcel of residential property.

An owner who holds adjacent lots which are nonconforming as to size does not have a right to build on both lots absent a provision in the zoning ordinance giving him that right, Schoepple v. Lower Saucon Township, 624 A. 2d. 699 (Pa 1993). Where owners have maintained two separate lots as a single parcel of residential property, there is no evidence that the properties were ever intended to be separate and distinct from each other. Jacquelin Vs. Zoning Hearing Board of Hatboro, 126 Cmwlth 20, 558 A. 2d 189 (Pa. Cmwlth. 1989). Where an owner holds two lots and builds on one and subsequent zoning changes make the vacant lot too small to build on, generally the owner is presumed to have intended to use the vacant lot as part of the house property. There was insufficient evidence offered to overcome that presumption in this case.

II. CONCLUSIONS OF LAW

1. The public notice of the hearing satisfies the requirements of the Municipalities Planning Code and the Pequea Township Zoning Ordinance.
2. The subject property is located in the Agricultural District which imposes a minimum lot size of one acre.
3. The subject property fails to meet the minimum lot size by approximately 30%, as each separate tax parcel identified in the Deed is approximately 15,000 square feet, for a total of 30,000 square feet.
4. Further development of the property as proposed by Applicant would result in two parcels, each of which would be substantially below the minimum lot size.
5. The property has been in continuous use as one parcel for over sixty years and continues to be so

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utilized. There is no evidence that the property owners ever intended the parcels to be utilized as separate and distinct parcels.

6. There is no hardship to the Applicant.

The meeting was adjourned at 20:50.

Kelly Snyder was the Court reporter for this hearing.

Respectfully submitted,

Tom Haas

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