

ZONING HEARING BOARD OF WARRINGTON TOWNSHIP
YORK COUNTY, PENNSYLVANIA

Case No.: ZHB-2023-06

Applicant: James D. Maclay
Home address:
2215 Pinetown Road
Lewisberry, PA 17339

Owner(s): James D. Maclay

Subject Property: PARID: 49-OE-39P
2210 Pinetown Road, Lewisberry, PA 17339

Requested Relief: The Applicant is seeking a use variance to section 311 of the municipal zoning ordinance requesting relief from the maximum development limit for this size parcel (33.2392 acres), from the current limit of 8.3098 acres to the requested 18.9109 acres.

Of that 18.9109 acres, the Applicant proposes to divide it into two lots – one 10 acre lot would be conveyed to Applicant’s son, whose intent would be to erect a single family home on said parcel. The remaining 8.9109 acre lot would be conveyed to the adjoining neighbor as an “add-on lot” to the neighbor’s parcel, with no transfer of development rights, nor with the intent to erect any building on said land.

Applicant seeks an appeal regarding the zoning officer’s denial of the add-on lot request, asserting an exemption under section 331.d of the municipal zoning ordinance.

Hearing History: The application was filed in Warrington Township on July 31, 2023. The hearing was held on September 7, 2023 at the Warrington Township municipal building and was open to the public to witness, participate and comment.

At said hearing, the following persons testified under oath:

Mr. Lyons, a professional land surveyor, testifying for the Applicant.

Mr. James Maclay, the Applicant.

Mr. Kotz, a member of the public.

Mr. Lance, a member of the public, and not in support of the requested relief, and had concerns about the preservation of farmland and worried that a house would be built in the farmed field.

Mr. Larry Hatter, a member of the public, and not opposed to the relief requested, but vocal about the recent changes to the zoning ordinance. Also, opined on the size of the farmland in question, noting that “13 acres is nothing to farm on.”

Ms. Sally Smith, a member of the public, and in support of the Applicant’s requested relief. “I like the field. And I think Jim (the Applicant) is doing the right thing by allowing so much to still be plowable.”

After due consideration, the Board took two open votes as to the merits of the application and then motioned to approve the relief sought. Both requests for relief were passed; the first by a vote of three out of three members; the second by a vote of two to one members.

Appearances: The Applicant was not represented by counsel.

No other attorneys were present representing person(s) participating in the hearing either in support of or in opposition to the application for relief.

Parties: The Applicant, James D. Maclay.

No other persons or entities requested party status.

Mailing Date: _____

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Warrington Township of York County Pennsylvania met the requirements of the Zoning Ordinance, the Municipal Planning Code, and other relevant statutes as to legal notice of the hearing held.
2. The Applicant is the owner of the subject property and therefore possessed of the requisite standing to make application to this Board.
3. The following exhibits were marked and admitted during the March 3, 2023 hearing and marked as follows:

No exhibits were marked or admitted, however the Applicant's proposed sub-division plan was used to show where the parcels are located and the topography of the land.

4. The Subject Property is located at 2210 Pinetown Rd. Lewisberry, PA, in the Rural Agricultural (RA) zone and sits on 33.2392 acres of land. The Subject Property has been used for agriculture purposes.
5. The Applicant provided the Board with the history and the proposed use of the property.
6. The Applicant testified to the following:
 - A. That the parcel has unique features such as a very deep ravine that cuts through the property;
 - B. The proposed add-on lot has always been wooded and is very wet as is most of the property;
 - C. The fields have wet areas and is currently farmed by Jimmy Eisenhower who grows "mulch hay" there;
 - D. The amount of farmable land will remain the same and not be further developed;
 - E. A single-family residence will be built of the 10-acre lot to be conveyed to Applicant's son;
 - F. That the request is for a dimensional variance and not a use variance;
 - G. That the proposed use is not in conflict with the uses permitted in the RA zone;
 - H. That he proposes to forfeit his right to develop multiple residential lots permitted currently (six 1.3-acre lots) for the granting of the variance that allow one 10-acre lot with one residential single-family home by putting a note on the plan depicting no further sub-divisions;
 - I. That he agreed to put said further development restrictions on his deed, as well;
 - J. That he implied there was a financial hardship involved that was forcing him to sell off a portion of the 33 acres when he testified that "...*the fact that I have to basically sell, I wouldn't even be selling it. But because I do, I want to keep the things as best I can to stay the way they are. And I feel like the proposal that I'm bringing here will do that.*"
7. The Applicant answered all of the questions posed to him by the board and/or solicitor.
8. No testimony or evidence was offered in opposition to the application and relief sought, although a letter sent by a township resident and member of the York County Ag Preservation Board, Jason Weaver, and read aloud by the zoning officer, asserting the Applicant has not demonstrated any hardship that would warrant the granting of variances. Also asserted that the ag preservation overlay was passed by the board of supervisors to protect farmland and the granting of the variance "would open the door to others requesting the same." Mr. Lance voiced his agreement to said letter.

CONCLUSIONS OF LAW:

1. The Applicant seeks a dimensional variance and not a use variance therefore the standard for unnecessary hardship is more relaxed when determining if the request for relief should be granted. *Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh v. Miryan's 721 A.2d 43 (1998)*.
2. "When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations. Thus, the grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation." See *Hertzberg*.
3. Here, the Applicant is not seeking to use the property any differently than it is currently being used, with the exception of the one single family residence that is being proposed in a wooded 10-acre area.
4. Without approving Applicant's request, the Applicant is currently permitted to, and therefore, could sub-divide the parcel into upwards of six residential parcels thereby changing the character of the neighborhood to more densely-populated, which is unfavorable to the neighbors accustomed to enjoying a lesser-populated and rural flavor.
5. Therefore, without approving Applicant's request for a dimensional variance and his commitment no further development rights, the unintended consequence could potentially be the loss of farmland instead of the preservation of farmland.
6. The Applicant fulfilled all requirements of the Warrington Township Zoning Ordinance as they pertain to seeking a variance for the dimensional changes and development of his parcel that he has proposed.
7. In the instant matter, the Board finds that the Applicant has provided credible and competent evidence in support of his application for a variance.
8. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the relief sought.

9. The Board concludes that granting the variance will not alter the essential character of the neighborhood or district in which the Subject Property is located, nor negatively impact the health, safety or welfare of the those residing in that neighborhood or district.
10. Accordingly, the Warrington Township Zoning Hearing Board determined the following after motions and votes:
 - A. Regarding the 8.9-acre parcel that is being proposed as an add-on lot to the adjoining property currently owned by Mr. Moody, the Board votes unanimously to grant the Applicants' request for relief and approves it as an exception under section 311.d of the zoning ordinance; and
 - B. Regarding the dimensional variance for the sub-division of both the 8.9-acre parcel and the 10-acre parcel (known as lot number 12 on the Applicant's development plans), the Board votes 2 to 1 in favor of granting the Applicant's request for relief and approves the dimensional variance, with the following stipulations that Mr. Maclay has indicated he is agreeing to:
 - i. The only building rights that would remain would be for the 10-acre lot and for the residual tract;
 - ii. That it be noted on the sub-division plan that no further sub-division will be allowed for the three lots – lot number 12, lot number 1, and the Moody parcel that is also going to encompass lot number 13 (as depicted on Applicant's development plans); and
 - iii. That all three of those deeds include deed restrictions stating the same, that no further sub-division would be allowed. Said deeds shall be presented to the zoning officer for approval prior to recording.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Warrington Township hereby **GRANTS** approval of the Applicant's request for approval of the exception under section 311.d of the zoning ordinance for the Applicant to convey an 8.9109-acre parcel to the adjoining landowner as an add-on lot.

Additionally, the Zoning Hearing Board of Warrington Township hereby **GRANTS** approval of the Applicant's dimensional variance request for relief allowing the sub-division of his parcel of land known as PARID: 49-OE-39P and located at 2210 Pinetown Road, Lewisberry, PA 17339, into three parcel – one 8.9109-acre parcel to be conveyed to the adjoining landowner, one 10-acre parcel to be

conveyed to Applicant's son (or to anyone else), and one residual parcel containing the balance of acreage not conveyed by the Applicant, with the following stipulated restrictions:

1. The only building rights that would remain would be for the 10-acre lot and for the residual parcel; and
2. That it be noted on the sub-division plan that no further sub-division will be allowed for the three lots – lot number 12, lot number 1, and the Moody parcel that is also going to encompass lot number 13 (as depicted on Applicant's development plans); and
3. That all three of those deeds include deed restrictions stating the same, that no further sub-division would be allowed. Said deeds shall be presented to the zoning officer for approval prior to recording.

The relief contained herein granted is subject to compliance with all other applicable governmental ordinances and regulations, including obtaining the proper permits.

**ZONING HEARING BOARD OF
WARRINGTON TOWNSHIP**

By: _____

Alan Winey, Chairman

NOTICE TO APPLICANTS

You have the right to appeal this Decision to the Court of Common Pleas of York County. Such an appeal must be taken with thirty (30) days of the date of this Decision was issued and mailed to you as stated above.