

## FERGUSON TOWNSHIP ZONING HEARING BOARD

Regular Meeting  
Tuesday, July 28, 2015  
7:00 pm

### I. ATTENDANCE

The Zoning Hearing Board held its regular meeting on Tuesday, May 27, 2015 at the Ferguson Township Municipal Building. In attendance were:

Board: Matthew Patch, Chairman  
George Pytel, Vice Chair  
Scott Petryshak  
Karen English  
Michael MacNeely  
Swamy Anatheswaran  
Mike Twomley

Staff: Jeffrey Ressler, Zoning Administrator  
Jeffrey Stover, ZHB Solicitor

Other in attendance included: Heather Bird, Recording Secretary; John Sepp, PennTerra Engineering; Joseph and Lois Dionisio; Terry Williams; Fred Henry; Scott Etter, Jeff Proch

### II. CALL TO ORDER

Mr. Patch called the Tuesday, July 28, 2015 regular Zoning Hearing Board meeting to order at 7:00 pm.

### III. SWEARING IN OF THOSE WHO WISH TO TESTIFY

Six individuals stood to be sworn in.

### IV. JOSEPH AND LOIS DIONISIO – VARIANCE REQUEST

Mr. Ressler stated the variance request is for tax parcel 24-004-084 and has frontage on West College Avenue and Route 45, which also bisects the property. The property is owned by Joseph and Lois Dionisio and is zoned RA. The property is approximately 57.04 acres in size. The applicants proposed a subdivision of the property which would create a 21 acre and 36 acre tract. The public roadway Route 45 would be the subdividing line of the property. The applicants requested a variance to the use regulations of Chapter 27-301 (3) to be permitted to allow the construction of one dwelling on one parcel and two dwellings on the other parcel, allowing raising of livestock with appropriate farm structures and other uses set forth in the RA Zone Table 301. Chapter 37-301, table 301, primary use 1, 2 and 3 require that there be 50 acres of property for these uses. There have been no other variance requests for this property.

Mr. Terry Williams, attorney representing the applicants, called Mr. Fred Henry a registered surveyor as his first witness. Mr. Henry completed the deed plot for the Dionisio property. Mr. Henry confirmed that the east side of Route 45 will be 36.6 acres and the west side will be 20.4 acres, including the highway right-of-way which is divided between each side, east and west.

Mr. Pytel asked why the right-of-way was included in the property acreage. Mr. Henry stated that the right-of-way is a right-of-way by plan. The state took the right-of-way for the roadway but did not remove the land from the property.

Mr. Williams stated the hardship for this parcel is that the property is bisected by state Route 45.

Mr. Joe Dionisio stated the 36 acre parcel, east of Route 45, currently consists of farmland of hay and woods and the west side of highway, 20.4 acre portion, there is corn and hay farmland. Mr. Williams asked if this has been practical for farming across Route 45. Mr. Dionisio stated that the roadway creates a complication with farming both sides because crossing Route 45 is difficult.

Mr. Williams asked what the applicants intentions are for the parcels if the Board were to grant the requested variances. Mr. Dionisio stated that a 57 acre parcel zoned RA has the right to have up to three dwellings units and permitted to engage in agricultural activities. He would intend to construct one additional home on the property. He intends to continue to farm the land and potentially keep some animals.

Mr. Anatheswaran asked why the applicant can't continue to do what they want for the future without a subdivision of the land. Mr. Dionisio stated they can continue to do what they want without the subdivision but with a higher degree of risk. Mr. Williams stated that the parcel is already subdivided by the state roadway although it is not officially acknowledged.

The Board adjourned to an executive session at 7:22 pm and returned to the meeting at 7:32 pm.

Mr. Anatheswaran made a motion to GRANT the variance for tax parcel 24-004-084 to allow the construction of one house on the 20.4 acre lot and two houses on the 36.6 acre lot and include all of the uses allowed in the RA zoning district for a 50 acre lot subject to the Board of Supervisors approval on subdivision of the property along Route 45. Ms. English seconded the motion. The motion passed unanimously.

#### **V. JOHN LECLAIR, DMD – VARIANCE REQUEST**

Mr. Ressler stated the variance is for property located at 3392 Shingletown Road, tax parcel 24-004-092B and the property is located in the RA Zoning District. The property is 31 acres in size and is a non-conforming in relation to lot size for a farm tract. The applicants proposed to create a cidery and winery on the property and are requested several variances. The cidery and winery are two separate businesses. The first variance that was requested was to Chapter 27-301.3 restricting primary uses one through five in table 301 to a rate of one per every 50 acres. The lot in question is only 31 acres in size. The applicant requested a variance to Chapter 27-301, table use category 5, to permit the cidery and winery on a tract of ground that is 31 acres in size. The proposed winery and cidery would be classified as a permitted use under use category #5 in Chapter 27-301, table 301. A use in category 5 is permitted on a lot between 1 and 5 acres in size. The cidery and winery are proposed on a tract of ground that totals 31 acres. The applicants also requested a variance to not be required to be required to utilize only raw materials produced on site for the cidery and winery. There was a previous variance hearing held on October 23, 2009 for a setback variance which was granted.

Mr. Scott Etter, attorney for applicants, submitted exhibit one, a map of the land in question. He stated the applicants are requesting two variances for one sub-sized lot but one lot that is too large. The variance requests are from lot size and the requirement to use only the production of raw material.

Dr. John LeClair, property owner, is a retired dentist who currently runs a small family farm. He purchased the property in 1982, moved into the home in 1989 and currently resides at the address. He stated the present use of the neighboring land is farming and residential homes, located through the wooded areas. In 1982 Dr. LeClair's plan was to have a small family farm and build home for his family. He has constructed two greenhouses and a large Morton building and a few

other buildings on the property for growing vegetables and store equipment. He has free range chickens a few pigs on the property. He does sell products to local restaurants and the general public. Currently everything he sells is raised at the farm. The existing buildings will be the only buildings for the cidery; no new buildings will be constructed. Mr. Etter reviewed the land plan with Dr. LeClair detailing the locations of the trees and facilities that currently exist on the property. Dr. LeClair reviewed the process for making apple cider. He stated the process does not make any noise or smoke, it does not have any waste other than apple pieces that will be placed back out in the orchards. He expects his cider production to be no more than 1,500 gallons per year. He anticipates that once all of his trees are planted they will produce enough rough materials to cover the production of his cider but until his trees are fully grown and producing or in the case of a great loss, due to weather or disease, he may get some products from other local farms. He would anticipate selling product throughout the full year. He plans to sell only the products he has produced. The cidery would require a small winery license and a federal license to operate.

Mr. Ressler asked Dr. LeClair about the Farm Café. Dr. LeClair stated that yes that would be planned on the same property but it would be separate buildings from the cidery.

Mr. Ressler asked if Dr. LeClair would plan to sell the additional farm products that he is currently selling. Dr. LeClair stated that yes he would sell those items to the Farm Café and general public.

Ms. English asked Dr. LeClair to clarify the variance request regarding the use of raw materials. Dr. LeClair stated he would not like a requirement to use only his raw materials, this would provide the opportunity to have a variety of fruits that he did not grow or if there was a bad year with apple production he would be able to obtain apples elsewhere. Mr. Etter stated the Township ordinance does not require that 100% of raw materials must be produced on the farm. Mr. Anatheswaran stated that he does not want to include the raw material issue if there is nothing in the Township ordinance requiring 100% of raw materials on site.

Mr. Anatheswaran asked for a hardship that is not self-inflicted. Mr. Ressler stated that back in the 80s when this property was acquired this property was a conforming lot.

Mr. Pytel stated he is concerned with protecting the land for the future of this property. The variance if approved will remain with the land and not the owner of the property and how to prevent someone in the future turning this into a large commercial operation. Dr. LeClair stated that he plans to leave this to his children and maintain a family farm operation. Mr. Pytel would like to include in a motion to prevent this area from becoming a commercial facility in the future.

Mr. Patch asked about the current sales and farming on the property. Dr. LeClair stated he does currently make cider and sell farm produced products. The variance would allow him to increase his cider productions. Mr. Patch confirmed that this type of cider is a hard cider. Dr. LeClair stated this would be controlled by the Liquor Control Board and state licenses. This will be new and he will apply for those licenses if the variance were approved.

Mr. Anatheswaran asked Mr. Ressler what use does this production fall under. Mr. Ressler stated on the chart provided to the Board it would be use #5, an establishment for the raising, processing, storage, sales and/or service of farm products, supplies or commodities which says the maximum size is 5 acres and the minimum size is 1 acre. The lease area proposed with this plan is approximately 2.5 acres. This would avoid subdivision of the property which is not permitted.

Mr. Stover stated that Dr. LeClair has been some variation of what his variance is requesting for some time now. He was not previously making the hard cider but was producing regular cider.

Does Dr. LeClair indeed need the variance? Mr. Patch agreed with this question. The ordinance does not state a difference between fermented and non-fermented farm produced products. Mr. Etter stated that after discussions with Township staff on this matter it was determined that a variance was the best way to handle this situation.

Mr. Pytel again expressed that he would like to have this include limitations so that this does not become a large commercial cidery/winery.

Mr. Jeff Proch stated that Dr. LeClair presented the plan and details fully. He stated that grapes were recently planted on the property to see what grapes grow best there. They want to keep the wine as local as possible. Mr. Patch asked if they anticipate being self-sufficient. Mr. Proch stated that yes once the grape type is established they should become self-sufficient. Mr. Pytel asked how much wine the applicants anticipate producing. Mr. Proch stated he anticipates approximately 10,000 to 15,000 gallons annually. Mr. Pytel asked if they would accept the variance to include a limitation on the total gallons permitted to be produced. Mr. Proch stated that would be acceptable. He stated they currently have a limited Pennsylvania Winery License that permits the production of no more than 200,000 gallons of wine per year.

Mr. John Sepp, PennTerra Engineering, suggested that the variance be limited to those products produced within the current facilities located on the property.

Mr. Pytel made a motion to grant the variance to maintain existing facilities and allow for the production of cider and wine up to 100,000 gallons annually. Mr. Twomley seconded the motion. The motion passed unanimously.

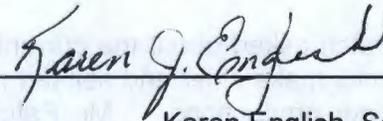
#### **VI. APPROVAL OF THE MINUTES FROM MAY 27, 2015**

Mr. Pytel made a motion to APPROVE the regular meeting minutes from May 27, 2015. Ms. English seconded the motion. The motion passed unanimously.

#### **VII. ADJOURNMENT**

With no further business to come before the Ferguson Township Zoning Hearing Board, Mr. Patch adjourned the regular meeting at 9:04 pm.

RESPECTFULLY SUBMITTED,



Karen English, Secretary  
For the Zoning Hearing Board

Date approved by the Board: 12-15-15