

FERGUSON TOWNSHIP ZONING HEARING BOARD

Regular Meeting

Thursday, March 20, 2014

7:00 pm

I. ATTENDANCE

The Zoning Hearing Board held its regular meeting on Thursday, March 20, 2014 at the Ferguson Township Municipal Building. In attendance were:

Board: George Pytel, Vice Chairman Staff: Jeffrey Ressler, Zoning Administrator
Scott Petryshak, Secretary Jeffrey Stover, ZHB Solicitor
Karen English
Charles Farrell
Michael MacNeely
Swamy Anatheswaran

Other in attendance included: Heather Bird, Recording Secretary; Melanie Eng, Troy Christine and Jim Walker

II. CALL TO ORDER

Mr. Pytel called the March 20, 2014 regular Zoning Hearing Board meeting to order at 7:00 pm.

III. SWEARING IN OF THOSE WHO WISH TO TESTIFY

Three individuals stood to be sworn in.

IV. MELANIE D. ENG – VARIANCE REQUEST

Mr. Ressler stated the variance request is for property located along Dry Hollow Road, tax parcel 24-005-05E and is owned by Melanie Eng and Victoria Dale. The property is zoned RA and is currently a 29 acre tract of ground that is in crop production which makes this a nonconforming lot for farm use. The minimum lot size for a tract in the RA zoning district for farming is 50 acres based on the current ordinance. The current tract, at 29 acres in size, is non-conforming to the Zoning Ordinance Chapter 27-301, table 301; use number 1 is subject to Chapter 27-901 Non-conformities. Chapter 27-901 intent reads as follows: *it is the intent of the Chapter to recognize the intent of nonconformities to continue, but to encourage that such lots, uses and structures be brought into conformity with this Chapter as constitutionally permissible. To achieve this end, nonconformities are subject to the regulations set forth in this Part.* The applicant desires to subdivide 14 acres from the 29 acre tract, leaving the subject parcel 15 acres in size. The 14 acres that the applicant desires to subdivide would be sold to the neighboring property. Chapter 27-903.B.2 limits what can be done to con-conforming uses to changes that do not constitute the addition of a new non-conforming use of structure. The proposed subdivision would create a new non-conforming lot size of 15 acres. The subdivision Ordinance in Chapter 22-504.3, Zoning Requirements, reads as follows: *Lot dimensions and areas shall not be less than specified by the provisions of the Township Zoning Chapter, unless a variance is first granted under the provisions of said Chapter. No parcel may be subdivided which will create a non-conforming lot or building setback. No parcel may be subdivided which would require, for building purposes, encroachment into flood plains or steep slopes in order to meet other requirements of the zoning chapter.* The proposed subdivision would create a non-conforming lot smaller than the original non-conforming lot. Mr. Ressler's opinion is that this is a self-created hardship. There have been no other variance requests for this property.

Mr. Pytel asked if the variance was granted would the owners lose the grandfather use of the property. Mr. Stover stated that they would not lose the non-conforming status because both lots would continue to be non-conforming.

Mr. Stover asked what would happen to the 14 acres. Mr. Ressler responded that they would be sold to the neighboring lot. Mr. Walker, owner of neighboring property, currently has 26 acres. This transfer of land would make his lot 40 acres, which would still be non-conforming.

Ms. Eng stated that in 1997 she was looking for property and came across the Myer farm which was being divided into 5 lots. At this time she acquired a partner in the purchase, Vicki Dale. The original intent was for both owners to build a home and have horses and sheep. In 1997 they communicated with the township about having livestock on 25 acres and the Township stated this was ok. Ms. Eng believes that precedence was set on the non-conforming lots years ago when the Township approved similar transfers of property for neighboring properties. In 1997 when this property was purchased it was a conforming lot although it was less than 50 acres. Since this time the Township zoning has changed to increase the lot sizes for farming and livestock.

Mr. Stover confirmed that Ms. Eng would be selling the back 14 acres of the property.

Ms. Eng stated the property is currently leased out for crop production. Since she purchased the property no livestock has been raised on the land. This land is completely undeveloped. Recently Ms. Eng spoke with Erika Green, former Planning and Zoning Director, stated that if a variance was granted that a home would be able to be built on the property.

Ms. English confirmed that this variance would change two non-conforming lots to two different sized non-conforming lots.

Mr. Anatheswaran asks Ms. Eng what her goal was and how would this subdivision help you reach your goal? Ms. Eng stated that she would like to move to the parcel and build a home and she still intends to farm on the land.

Mr. Walker, neighbor, stated that the 14 acres he intends to purchase will continue to be farmed and will increase his total acreage.

Mr. Stover asked if selling these acres would allow Ms. Eng to buy out her partner. Ms. Eng responded yes.

Mr. Anatheswaran asked Ms. Eng to through the five requirements of granting a variance and answers each question. Is the problem with the parcel the change in the Township's Zoning or is it a personal financial advantage for Ms. Eng to buy out her partner? Ms. Eng was not able to provide the answers to these questions.

Mr. Ressler stated that even if the zoning ordinance was not changed from 25 acres to 50 acres, this would still not be allowed because it would be taking a conforming lot and making it non-conforming. Mr. Anatheswaran agrees with Mr. Ressler.

Mr. Walker does feel that the hardship was created by the township by changing the zoning ordinance. Mr. Anatheswaran said that weeks after she purchased this lot, she would not have been able to make this transfer.

Mr. Stover stated that to build only a single family home in the RA zone the maximum lot size would be 2 acres. To build a home and farm the minimum lot size is 50 acres. Because the 50 acres was passed after the purchase of this property Ms. Eng could build a home on her non-conforming lot and continue to farm it. The non-conforming status belongs to the property not the owner so a future owner would be able to build a home and continue to farm on the land.

Ms. English made a motion to GRANT the variance for property along Dry Hollow Road, tax parcel #24-005-05E, to subdivide 14 acres off the existing 29 acre lot with the intention to sell that 14 acres to the neighboring property owner. Mr. Anatheswaran seconded the motion.

The motion was denied by a unanimous vote.

V. KEYSTONE REAL ESTATE GROUP L.P. – VARIANCE REQUEST

Mr. Ressler stated the variance is for property located at 2124 Old Gatesburg Road, tax parcel number 24-004-021G, and is owned by Marie Fedon. The property is located in the IRD Zoning District. The applicant for the hearing is Troy Christine, Keystone Real Estate, on behalf of the owner. The applicant is proposing to rent office space in 2124 to a new tenant and have found there is an onsite parking shortage of 15 spaces based on the zoning ordinance Chapter 27-809. The required parking for an office use is one required parking space per 250 square feet of office. The applicants are requesting that a variance be granted to the off-street parking regulations, with consideration given to the hours of operation for the prospective tenant along with the peak houses of operation of the tenants in 2120 Old Gatesburg Road, the adjacent property. 2120 Old Gatesburg Road and 2124 Old Gatesburg Road are buildings on adjacent lots which share parking. March 18, 1993 a parking variance was granted for the Good Shepherd Church to use the site with shared parking at the HRB site. The Board of Supervisors recommended that should a variance be granted it be a conditional variance predicated upon the current and proposed uses and the current and proposed tenant hours of operation.

Mr. Al Pringle, President of Keystone Real Estate Group, stated the variance request is for the parking at parcel number 24-004-021G. With regards to uniqueness of the property, both of the buildings were built prior to the change of the zoning ordinance in regards to parking. With regards to number 2, this property can't be consistently used with the ordinance; the change in the parking already has the property in a non-conforming state. The hardship created was due to the change in the parking creating the difference in stalls. The variance minimum is met because they aren't asking to add space the request is to use the existing space as needed. Lastly, the adverse effects of the neighborhood would not exist because they are not proposing to build anything new or create any conflicts.

The original parking requirements of the properties strictly as they were used were 250 square feet per space for office and 350 square feet per industrial. With the combination of the square footage combined 146 parking spaces would be required. The site has 104 spaces making the existing non-conformance 42 spaces. With the change of use of the property going from industrial to gymnastics which is based on 1 per 3 occupants, the use type changed not the building.

In total if the site were used for the gymnastics and tenant the building with office use the spaces would be non-conforming by 65 spaces as opposed to the 42 spaces currently. The business hours of operations from the gymnastics as compared to the office/industrial uses, 8 am to 5 pm, and at least 90% of the gymnasium use is after 5pm. If they took gymnastics out and counted it after hours the buildings would be conforming. This would create two periods of conformity.

The new tenant will be office or industrial use.

Mr. MacNeely asked if summer camps were taken into the calculations. Mr. Pringle responded that they did look into this and these are primarily drop off and pick up during the day.

Ms. English made a motion APPROVE a CONDITIONAL variance for tax parcels 24-004-021G-0001P and 24-004-021G-0002P in accordance with the zoning ordinance Chapter 27-809, the conditional variance is predicated upon the current and proposed uses and the current and proposed tenant hours of operation continue, should the uses or hours of operation for the current or proposed uses change this variance will be null and void and a new variance would need to be reapplied for. Mr. Anatheswaran seconded the motion.

The motion passed unanimously.

VI. APPROVAL OF MEETING MINUTES

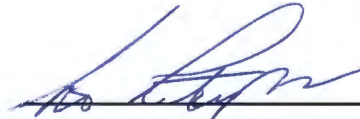
Ms. English made a motion to APPROVE the minutes from Tuesday, February 25, 2014 Zoning Hearing Board Organizational and Regular Meetings. Mr. Farrell seconded the motion.

The motion passed unanimously.

VII. ADJOURNMENT

Ms. English made a motion to adjourn the meeting. Mr. Anatheswaran seconded the motion. With no further business to come before the Ferguson Township Zoning Hearing Board, Mr. Pytel adjourned the March 20, 2014 meeting at 8:29 pm.

RESPECTFULLY SUBMITTED,



Scott Petryshak, Secretary
For the Zoning Hearing Board

Date approved by the Board: 5-21-14