

MONROE TOWNSHIP ZONING HEARING BOARD

IN RE: : :

Application of : APPEAL NO. 2022-04 ZHB
Meriweather Fields, LLC :
Premises: South Locust Point Road :
Mechanicsburg, PA 17055 :
Tax Parcel # 22-10-0642-045B :

DECISION

This case comes before the Monroe Township Zoning Hearing Board (“Board”) pursuant to the provisions of §604.4 of the Monroe Township Zoning Ordinance (hereinafter referred to as the “Ordinance”), the same being an application for a variance by Meriweather Fields LLC (“Applicant”) from the provisions of §201.5 of the Ordinance, relating to the minimum required lot width at the front setback requirement in the Agricultural Zone. The variance is sought to facilitate the creation of one conventional and two flag lots for single-family residential dwellings, in apparent violation of the foregoing Section of the Monroe Township Zoning Ordinance.

Pursuant to notice duly given, as required by the provisions of the Ordinance, a hearing was held before the Board at the Monroe Township Municipal Offices, 1220 Boiling Springs Road, Mechanicsburg, Pennsylvania, on Tuesday, September 6, 2022, beginning at 6:00 p.m. The matter was heard by Rich Moore, Chair of the Board, and by Paul Rast, Vice-Chair of the Board and by Greg Sheffer, Board Member.

In accordance with the provisions of the Ordinance, notice of said hearing was given to the Applicant and to adjoining property owners. A Proof of Publication of public notice is also made a part of the Record.

The applicant was represented by Attorney Erik Hume, Esq. Testimony at the hearing was offered by the Applicant's Engineer (Scott Akens). An adjoining property owner, Five Way Partners, LP, entered its appearance via its legal counsel, James Strong, Esq.

The Application-related submissions filed by the Applicant were admitted into evidence as Board Exhibits. Also admitted was a packet of exhibits submitted by the Applicant at the hearing, which was marked as Applicant Exhibit #1. Also admitted into evidence was an Exhibit offered by Intervenor, which was marked as Exhibit FW-1.

At the conclusion of the evidentiary hearing of September 6, 2022, the Board in open meeting conducted a formal discussion of the matter and took formal action.

The Record consists of the aforesaid Notice of Public Hearing, Proof of Publication, and letters of notification of neighboring property owners, together with the original Application and related submissions filed by the Applicant and by Intervenor. A transcript of the hearing was made and is also part of the Record of this matter.

FINDINGS OF FACT

After a review of the testimony and the documents included in the Record of this case, the Board makes the following Findings of Fact:

1. On July 26, 2022, Meriweather Fields LLC ("Applicant"), the owner of the property located on South Locust Point Road (Tax Parcel #22-10-0642-045B), Cumberland County, Pennsylvania, filed a Zoning Hearing Board Application, seeking a variance that would allow for the creation of one conventional lot and two flag lots from the existing parcel in question on which new single-family dwellings were planned to be constructed in the Agricultural Zone. The Application included documents depicting the dimensions relating to the requested variance, which have been received into evidence.

2. Applicant sought a variance from the Ordinance's requirement of a minimum lot width dimension of 200 feet at the front building setback line. The variance requested sought approval of a lot width of 183.18 feet at the front setback line. The proposed variance of 16.82 feet is approximately 8.41% of the required minimum width.

3. The tax parcel in question was created pursuant to an earlier Subdivision Plan that was recorded in the Office of the Cumberland County Recorder of Deeds on December 10, 2020. and is substantially irregular in shape. See Exhibit FW-1.

4. The parcel in question has no frontage on Clouser Road and has a comparatively narrow frontage on South Locust Point Road.

5. The drawings submitted by the Applicant depict a proposed common driveway for all three lots that are proposed to be created by subdividing the current parcel under review. Each of the two proposed flag lot poles would be 25 feet wide.

6. Under cross-examination, Applicant's engineer admitted that the creation of one flag lot on the parcel instead of two would not require a minimum lot width variance.

ADDITIONAL FINDINGS OF FACT **AND CONCLUSIONS OF LAW**

When determining whether to grant a variance in any given case, this Board must take into consideration the provisions of the Ordinance setting forth the criteria for the granting of variances. Accordingly, this Board must be guided by the provisions of Section 604.4 of the Ordinance, which provides in pertinent part as follows:

604.4. Variances - The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may, by rule, prescribe the form of application to the Zoning Officer. The Zoning Hearing Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or zoning district in which the property is located;
2. That because of such physical circumstances or conditions, there is not a possibility that the property can be developed in strict conformity with the provisions of this Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
3. That such unnecessary hardship has not been created by the applicant;
4. That the variance, if authorized, will not alter the essential character of the zone or neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare;
5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In the instant case, the Applicant has not made a sufficient showing either that (1) there is no possibility that the property can be developed in strict conformity with the provisions of the Ordinance, inasmuch as the Applicant could develop the parcel with one flag lot only; or (2) that the alleged hardship was not created by the Applicant's earlier subdivision plan; or (3) that the variance requested is the minimum modification necessary to alleviate any alleged hardship, in that no variance at all would be required for the creation of a single flag lot on the parcel.

The Applicant further contends that the variance should be granted as a "*de minimis*" variation from the Ordinance's requirements. The Board specifically finds that a proposed deviation of 8.41% from the required minimum is not a "*de minimis*" request. See, e.g., *McCarry v. Haverford Township Zoning Hearing Board*, 2015 WL 1650306 (Pa. Cmwlth. 2015); *Hawk v. City of Pittsburgh Zoning Board of Adjustment*, 38 A.3d 1061 (Pa. Cmwlth. 2012).

Consequently, based on the foregoing discussion and analysis, the Board denies the Applicant's request for a variance with respect to the creation of two proposed flag lots and a conventional lot on the parcel in question.

ALL MEMBERS CONCUR.

MONROE TOWNSHIP ZONING HEARING BOARD

By: Philip J. Murren
Philip J. Murren, Solicitor

Dated: October 19, 2022