

**DECISION OF THE ZONING HEARING BOARD OF
LONGSWAMP TOWNSHIP, BERKS COUNTY, PENNSYLVANIA**

In Re: Application of Courtney Headdings and Dennis Romig for variances pursuant to §§ 606(2)(8) and (9) of the Longswamp Township Zoning Ordinance of 2015, as amended, for the property located at State Street in Mertztown, Longswamp Township, Berks County, Pennsylvania, bearing Property Identification No. 59548303126483.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Zoning Hearing Board of the Township of Longswamp (hereinafter referred to as the “Board”) finds as follows:

FINDINGS OF FACT

1. The property, which is the subject of this land use application, is located on State Street in Mertztown, Longswamp Township, Berks County, Pennsylvania, and bearing Property Identification No. 59548303126483, (hereinafter referred to as the “Subject Property”).
2. The applicants are Courtney Headdings and Dennis Romig of 1211 State Street in Mertztown, Berks County, Pennsylvania 19539 (hereinafter referred to as the “Applicants”).
3. The owners of the Subject Property are Courtney Headdings and Dennis Romig of 1211 State Street in Mertztown, Berks County, Pennsylvania 19539.
4. The Subject Property is located in an area zoned “R” – Rural District pursuant to a Longswamp Township Zoning Ordinance of 2015, as amended (hereinafter referred to as the “Zoning Ordinance”) and the Longswamp Township Zoning Map.
5. Public notice of the hearing of August 29, 2018, was timely advertised in the Reading Eagle, a newspaper of general circulation within Longswamp Township, on August 17, 2018 and August 22, 2018; adjacent property owners were timely notified of the hearing by mail

on August 6, 2018; and the Subject Property was timely posted with notice of the hearing on August 14, 2018.

6. The Subject Property is an irregularly shaped lot of land consisting of a total of approximately 1.69 acres of land.

7. The Applicants, Courtney Headdings and Dennis Romig, own a lot adjacent to the Subject Property. This piece of land consists of .29 acres (hereinafter referred to as the "Adjacent Property"), with an address of 1211 State Street and bearing Property Identification No. 548303126483.

8. The Adjacent Property is used as the Applicants' primary residence.

9. The Applicants propose to use the Subject Property to house three (3) mules and two (2) ponies.

10. There is currently an eight by twelve foot (8' x 12') run-in shed on the Subject Property that is three-sided with a roof. The Applicants intend to construct a second ten by twenty foot (10' x 20') run-in shed on the Subject Property. Both sheds will be used as a shelter for the mules and ponies.

11. The ten by twenty foot (10'x20') run-in shed will be located approximately sixty feet (60') from State Street, seventy-seven feet (77') from a neighboring property owned by John Rohrbach and twenty feet (20') from the Adjacent Property.

12. The Subject Property will be secured by fencing around the entirety of the Subject Property. The fencing has multiple secured gates allowing the Applicants to access the Subject Property and to relocate the animals on the Subject Property as is reasonably necessary for the health and well-being of both the animals and the land.

13. The Applicants have obtained a Manure Management Plan that was developed by Rosetree Consulting, LLC and submitted to the Berks County Conservation District for review.

14. On or about July 12, 2018, the Berks County Conservation District issued a letter finding the Manure Management Plan submitted by the Applicants, as written, meets the Pennsylvania regulatory requirements defined under 25 Pa. Code Chapter 91.36 – Manure Management.

15. The Applicants also obtained an Agricultural and Sedimentation Plan that was developed by Rosetree Consulting, LLC and submitted to the Berks County Conservation District for review.

16. On or about July 12, 2018, the Berks County Conservation District also noted that the Agricultural Erosion and Sedimentation Plan, as written, meets the Pennsylvania regulatory requirements defined under 25 Pa. Code Chapter 102 – Erosion and Sediment Pollution Control.

17. Neighboring property owners appeared at the time of the hearing and testified in support of the application.

18. Due to unique physical conditions at the Subject Property, including its size and shape an unnecessary hardship exists preventing the Subject Property from being developed in strict conformity with the Zoning Ordinance.

19. The authorization of variances is necessary for the reasonable use of the Subject Property.

20. The unnecessary hardship was not created by the Applicants.

21. Neither the Applicants proposed use nor the granting of variances will alter the essential character of the neighborhood or district in which the Subject Property is located, and it

will not subsequently or permanently impair the appropriate use or development of adjacent properties.

22. The Applicants' proposed use and the granting of variances will not be detrimental to the public welfare.

23. The variances requested will represent the minimum variance that will afford relief and represent the least modification possible of the regulations at issue.

DISCUSSION

After careful and thoughtful consideration, the Zoning Hearing Board finds the Applicants have met, or will meet, the requirements of the Zoning Ordinance for obtaining a special exception and variance.

In reaching its decision, the Board is bound by the fundamental principle of zoning that an individual should be able to use his own land as he sees fit. Although zoning is generally considered a proper exercise of governmental authority that can limit property rights, the restriction on the use of the property cannot be unreasonable under the circumstances. *In re: Concord Appeal*, 439 Pa. 466, 471, 268 A.2d 765, 768 (1970). As the Pennsylvania Supreme Court stated:

Zoning is a tool in the hands of governmental bodies which enables them to more effectively meet the demands of evolving and growing communities. It must not and cannot be used by those officials as an instrument by which they may shirk their responsibilities. Zoning is a means by which a governmental body can plan for the future – it may not be used as a means to deny the future.

Zoning provisions may not be used ... to avoid the increased responsibilities and economic burdens which time and natural growth invariably bring.

National Land and Investment Company v. Easttown Township, 419 Pa. 504, 527-528, 215 A.2d 597, 610 (1965) (emphasis added). These basic, fundamental guidelines provide the framework within which the Board must consider this matter.

In this case, the Applicants are seeking dimensional variances. When an applicant seeks a dimensional variance it is merely seeking a reasonable adjustment of the zoning regulations. *Singer v. Philadelphia Zoning Board of Adjustment*, 29 A.3d 144, 149 (Pa.Cmwlt. 2011). A dimensional variance is an adjustment of the zoning regulations in order to use 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 zoning regulations. *Hertzburg v. Zoning Board of Adjustment*, 554 Pa. 249, 721 A.2d 73 (1998).

Pursuant to §606 of the Zoning Ordinance, the following agricultural use regulations are at issue in this case:

2. Minimum lot size for keeping large grazing animals shall be four (4) acres. On lots of four (4) acres, two large grazing animals may be kept. For each large grazing animal beyond the two permitted on four (4) acres, an additional one (1) acre per animal will be required.

* * *

8. Except as noted elsewhere in this Section, all new agricultural buildings, which will not be an expansion of an existing building, intended for the housing of animals or fowl shall not be less than 100 feet from any lot line, unless the Pennsylvania Nutrient Management Act requires stricter setbacks due to use, slope, or other site conditions. All other new agricultural buildings, which will not be an expansion of an existing building, shall meet the yard regulations of the applicable zoning district. All lawful agricultural buildings which existed at the effective date of this ordinance may be expanded subject to the yard requirements of the applicable zoning district, provided that and notwithstanding any other provision of this Ordinance, in the case of a lawful agricultural building which prior to the effective date of this Ordinance was constructed closer to a lot line than is permitted by this Ordinance, the agricultural building may be expanded into the required yard provided that the expanded

portion of the building is located no closer to the lot line than the existing portion of the building.

9. No new slaughter area, area for the storage of manure, or spent mushroom compost, structure for the cultivation of mushrooms or the raising of animals or fowl, or building housing animals or fowl shall be permitted within 200 feet of any existing residential structure (other than residential structures occupied by individual families actively engaged in management of, employment of, or retirement from the use of referred to above in this paragraph which is being created), unless the Pennsylvania Nutrient Management Act requires stricter setbacks due to use, slope, or other site conditions. This Section shall be applicable to additions to already existing structures.

§606(2)(8) and (9) of the Zoning Ordinance.

The Board has legislatively been granted jurisdiction to hear applications for variances. 53 P.S. § 10909.1 (a)(5). The standards that the Board must consider are set forth in the Municipalities Planning Code, the Zoning Ordinance and related case law. The Zoning Ordinance sets forth the following criteria that must be met to obtain a variance:

The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of the Zoning Ordinance will inflict unnecessary hardship upon the applicant... The Zoning Hearing Board may grant a variance provided that all of the following findings are made where relevant in a given case:

- a. 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 Zoning Ordinance in the neighborhood or district in which the property is located; and
- b. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property; and
- c. That such unnecessary hardship has not been created by the appellant; and
- d. That the variance, if authorized, will not alter the essential character of the neighborhood or district 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; and

e. 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.

Zoning Ordinance §1002(4). The requirements in the Zoning Ordinance are identical to those contained in the Municipalities Planning Code, 53 P.S. § 10910.2.

In this case, the Board finds that both the size and shape of the Subject Property create hardships that prevent the Subject Property from being developed in strict conformity with the Zoning Ordinance. As a result, the grant of the requested variances is appropriate.

When granting variances, however, the zoning ordinance authorizes the Zoning Hearing Board to attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Zoning Ordinance and the Pennsylvania Municipalities Planning Code. In good conscience, the Board would not be able to approve this Application without conditions. The conditions imposed must be strictly followed. Failing to do so can and will result in the zoning permit being revoked.

CONCLUSIONS OF LAW

1. The Zoning Hearing Board of Longswamp Township has jurisdiction to decide this land use application pursuant to the Longswamp Township Zoning Ordinance of 2015, as amended, and the Pennsylvania Municipalities Planning Code of 1968, P.L. 805, No. 246 as reenacted and amended, 53 Pa.C.S.A. §10901.1, *et seq.*

2. Pursuant to the Zoning Ordinance, the Board shall hear and decide requests for variances filed with the Board in writing, as provided for in the Zoning Ordinance and in accordance with all standards and criteria contained in the Zoning Ordinance.

3. The Applicant has met all the requirements of § 1002(4) of the Zoning Ordinance to obtain the requested variances.

ORDER

AND NOW, the Longswamp Township Zoning Hearing Board, by a unanimous vote, hereby rules as follows:

1. The Applicants' request for a variance pursuant to § 606(2) of the Zoning Ordinance to keep no more than two (2) ponies and three (3) mules on the Subject Property is GRANTED.

2. The Applicants' request for a variance from § 606(8) of the Zoning Ordinance to place a ten by twenty foot (10' x 20') run-in shed less than 100 feet from any lot line is GRANTED.

3. The Applicants' request for a variance from §606(9) of the Zoning Ordinance to place a ten by twenty foot run-in shed less than 200 feet from existing residential structures is GRANTED.

All of the foregoing relief is subject to compliance with the following conditions:

1. The Applicants shall provide the Township Zoning Officer with proof of insurance on no less than an annual basis evidencing that the Subject Property and the activities thereon are insured.

2. The Applicants shall enter into and provide the Township Zoning Officer with copies of written agreements with any private persons or commercial entities providing for the disposal of manure and waste.

3. The Applicants shall not add anymore grazing animals to the Subject Property than those identified during the hearing and at no time may the Applicants replace the animals without obtaining zoning hearing board authorization.

4. The Applicants shall fully comply with the Manure Management Plan and the Agricultural Erosion and Sedimentation Plan as submitted to the Township with its zoning application.

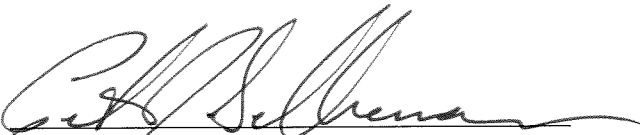
5. The Applicants shall comply with all local, state, and federal laws and regulations relating to the proposed use of the Subject Property.

6. The Applicants are bound by the testimony presented at the zoning hearing and any development or construction deviating from the testimony shall be a violation of this Order.

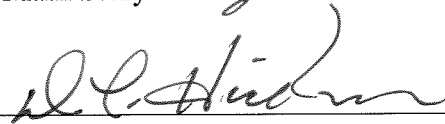
No zoning or occupancy permit shall be issued by the Township Zoning Officer unless all terms and conditions as set forth in this Decision are complied with and upon any subsequent non-compliance, any said issued permits shall be immediately revoked.

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Longswamp Township Zoning Hearing Board:

By: 
Peter Silbermann, Acting Chair

By: 
Mark Story

By: 
Donald Hickman

Date of Issuance of Written Decision: 9/6/18

ANY AGGRIEVED PERSON MAY APPEAL THIS DECISION TO THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA, WITHIN THIRTY (30) DAYS FROM THE DATE OF THE ISSUANCE OF THIS WRITTEN DECISION.