



ZONING HEARING BOARD APPLICATION

YORK COUNTY, PENNSYLVANIA



❖ Part 1:

APPLICANT(S)/EQUITABLE OWNER

Name: Sun Myong Park and Alice M. Park
Address: 1605 York Haven Road
York Haven, PA 17370
Phone: 717-805-8700

EXISTING OWNER OF PROPERTY:

Name: Sun Myong Park and Alice M. Park
Address: 1605 York Haven Road
York Haven, PA 17370

PROPERTY LOCATION:

Address: 652B Fishing Creek Rd
New Cumberland, PA 17070
Lot Size: 12.290
Date Purchased: 10/1/2004
Location:

PRESENT USE OF PROPERTY:

Single Family Detached Residential

EXISTING ZONE: RS

❖ Part 2:

ZONING REQUEST (Identification of the applicable request(s)):

- () SUBSTANTIVE CHALLENGE
() SPECIAL EXCEPTION
(X) VARIANCE
() APPEAL OF THE ZONING OFFICERS DECISION

FILE COPY

2016-02

SECTION(S) OF ZONING ORDINANCE WHICH APPLY TO THIS REQUEST - Please identify the specific section(s) of the Zoning Ordinance involved in the request):

§300-20

❖ Part 3:

DESCRIPTION OF REQUEST:

See attached memo

Part 4

LIST ALL INDIVIDUAL PROPERTY OWNERS WITHIN 300 FEET OF THE PERIMETER OF THE ENTIRE PROPERTY.

NAME	ADDRESS	USE TYPE
Kiehl C. and Pattie L. Miller	660 Danner Lane Tax Parcel #27000QF0112000000	Homestead Zone: RL
James Slaseman, III	637 Danner Lane Tax Parcel #27000QF0115E000000	Homestead Zone: RS
Steven A. & Dawn S. Keefer	635 Danner Lane Tax Parcel #270000QF0115C000000	Single family home Zone: RS
James Slaseman, Jr. and Glenda D. Slaseman	643 Danner Lane Tax Parcel #27000QF0115D000000	Homestead Zone: RS
Chester P. Hoffman	648C Fishing Creek Road Tax Parcel #27000QF0115A000000	Single family home Zone: RS
Stephen Thomas	644A Fishing Creek Road Tax Parcel #27000RF016200000000	Single family home Zone: RS
Joshua M. Irvin	646 Fishing Creek Road Tax Parcel #27000RF01630000000	Homestead Zone: RS
Eugene D. and Mary M. Atkins	652 Fishing Creek Road Tax Parcel #27000RF01660000000	Single family home Zone: RS
Terry L. Shriner	656 Fishing Creek Road Tax Parcel #27000RF0166A000000	Homestead Zone: RS
Brian W. Mellott	658 Fishing Creek Road Tax Parcel #27000RF0166B000000	Single family home Zone: RS
David Beinhower	660 Fishing Creek Road Tax Parcel #27000RF01670000000	Single family home Zone: RS
Nicole D. Shanahan	662 Fishing Creek Road Tax Parcel # 27000RF0138R000000	Homestead Zone: RS
Scott R. and Amanda L. Endy	664 Fishing Creek Road Tax Parcel #27000RF0138Q000000	Homestead Zone: RS
Edward A, III and Dona H. Elscheid	684 Fishing Creek Road Tax Parcel #27000RF0168C000000	Homestead Zone: RL
- APPLICANT -		

IN THE MATTER OF : **BEFORE THE FAIRVIEW TOWNSHIP**
THE APPLICATION OF : **ZONING HEARING BOARD**
SUN MYONG PARK and ALICE : **YORK COUNTY, PENNSYLVANIA**
M. PARK : **DOCKET NO. 2016-02**

**DECISION DENYING THE REQUEST FOR A USE VARIANCE IN THE
SINGLE FAMILY RESIDENTIAL ZONING DISTRICT**

The Applicants applied for a variance to the Fairview Township Zoning Ordinance, Section 300-20, Permitted Uses in the Single Family Residential (RS) Zoning District, with respect to the property located at 652B Fishing Creek Road, New Cumberland, PA, 17070. A hearing on the application was held on July 21, 2016 at 7:00 p.m. at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070.

FINDINGS OF FACT

1. The Applicants are Sun Myong Park and Alice M. Park, 1605 York Haven Road, York Haven, PA 17370. The Applicants are the owners of the property at 652B Fishing Creek Road, New Cumberland, PA, which is the subject of this application.
2. The Applicants were represented at the hearing by Tom Nehilla, Esquire, Rhoads & Sinon LLP, 1 South Market Square, Harrisburg, PA 17101.
3. Notice of the hearing was properly advertised; the property was properly posted; and all neighboring property owners required to be notified of the hearing were notified in accordance with the Township Ordinance and the Pennsylvania Municipalities Planning Code.
4. The Applicants' property is 10.502 acres in area and is currently improved with a single family dwelling unit. The Applicants are requesting a use variance to Section 300-20 to

permit the non-commercial keeping of livestock on the property. The Applicants plan to sell the property and the proposed buyers wish to construct a barn on the property to house two (2) horses, two (2) cows, and five to ten (5-10) chickens. The animals would be maintained strictly for personal, non-commercial purposes.

5. The parcel is located in the RS Zoning District and adjoins the Rural Living (RL) Zoning District. The Fairview Township Zoning Officer testified that approximately 1,500 linear feet of the perimeter of the property adjoins RS District properties, while approximately 1,200 linear feet of the perimeter adjoins the RL District.

6. The non-commercial keeping of livestock is not permitted in the RS District.

7. Sun Myong Park, owner, and Benjamin and Tia Kauffman, proposed buyers, appeared as witnesses. The witnesses expressed the desire to use the 10 acre parcel as a single family residence and farmette with the livestock maintained in the barn and pastured on the acreage. The witnesses acknowledged that the property could be used in conformity with the Ordinance, including the single family residential use and permitted non-animal agricultural uses, among other uses allowable under the Ordinance. They did not identify any unusual or unique characteristics of the parcel which create an unnecessary hardship in permitted use of the property so as to potentially or arguably support a use variance.

8. Non-commercial keeping of livestock is a permitted use in the RL District.

DISCUSSION

The subject parcel is in the Single Family Residential Zoning District of Fairview Township. Permissible uses in this Zoning District, pursuant to Section 300-20 of the Ordinance, include, but are not limited to the existing single family residential use. While certain

commercial agricultural and forestry uses would also be permitted as mandated by the Pennsylvania Municipalities Planning Code, the non-commercial keeping of livestock is expressly not permitted by the Fairview Township Zoning Ordinance in this District. The non-commercial keeping of livestock is permitted in the Rural Living (RL) District and, therefore, the use desired would be allowed if the premises were in that District.¹

To justify a use variance, the Applicant before the zoning hearing board has a very substantial burden. To establish entitlement to a variance to use the property for a purpose for which it is not zoned, the applicant must show that it cannot be reasonably used for **any** of the permitted purposes under the Ordinance. See Fairview Township Zoning Ordinance Section 300-99.E(4). The property owner must establish that “there are unique circumstances or conditions. . . peculiar to the particular property” which, in conjunction with the literal application of the Ordinance, would “inflict unnecessary hardship on the applicant.” Furthermore, an applicant must demonstrate 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 the Ordinance. Moreover, any unnecessary hardship must not have been created by the applicant and a variance, if authorized, must “not alter the essential character of the zoning district or neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property.” The Applicants did not present evidence to support these requirements for a use variance; therefore, they have failed to meet their burden and the application for a variance should be denied.

¹ The Zoning Hearing Board does not have the authority to rezone a property from one district to another. That authority is vested in the Board of Supervisors.

CONCLUSION

The applicant has the burden of proof in demonstrating that the criteria established in the Ordinance and under Pennsylvania law for a use variance are met. The Applicants did not meet this burden and the application for the variance should therefore be denied.

DECISION

On the basis of the foregoing findings and conclusion and on the basis of all the testimony and evidence presented at the hearing, the application for a variance to the Fairview Township Zoning Ordinance Section 300-20, Permitted Uses in the Single Family Residential Zoning District, is denied.

The application was denied as stated upon the motion of Mr. Guy, seconded by Mr. Maxwell and adopted 3-0 by the Board Members present and voting.

Dated: Aug. 5, 2016

By: 
David Guy, Chairman

Distribution: Applicants