

IN THE MATTER OF : **BEFORE THE FAIRVIEW TOWNSHIP**
THE APPLICATION OF : **ZONING HEARING BOARD**
CHARLES E. WESTHAFER, Jr. & : **YORK COUNTY, PENNSYLVANIA**
BRENDA L. WESTHAFER : **DOCKET NO. 2017-04**

DECISION GRANTING VARIANCES TO
THE FAIRVIEW TOWNSHIP ZONING ORDINANCE

The Applicants applied for variances¹ to Section 300-16, Area and Design Requirements; Section 300-41, Lot Frontage onto Public Streets; and Section 300-44, Number of Principal Uses and/or Principal Structures Per Lot, of the Fairview Township Zoning Ordinance for their property in the Rural Living Zoning District located on Heck Hill Road, Lewisberry, Fairview Township, PA 17339. A hearing on the application was held on September 21, 2017, 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 Charles E. Westhafer, Jr., and Brenda L. Westhafer with an address of 781 Heck Hill Road, Lewisberry, PA 17339. The Applicants are the owners of two (2) adjoining tracts of land: a 12.99 acre tract and a 3.03 acre tract which are the subject of the application.

¹ The application also requested a special exception or special exceptions; but no special exception(s) are applicable to the requested relief. Therefore, those requests are considered moot or, to the extent necessary, any request for a special exception is denied.

2. The Applicants were represented by Brian C. Linsenhach, Esquire, of Stone, Wiley & Linsenhach, P.C., 3 N. Baltimore Street, Dillsburg, PA 17019. Testifying on behalf of the Applicants were Charles Westhafer, owner, and Todd A. Lyons, PLS, Lyons Surveying, P.O. Box 367, Dillsburg, PA 17019.

3. The Applicants' parcels are shown on Applicants' Hearing Exhibit 1, a proposed Final Subdivision Plan prepared by Mr. Lyons. The larger, 12.99 acre parcel has four dwellings and several outbuildings. It has no road frontage. Access to Heck Hill Road is provided by access easements over adjoining land of the Applicants and neighboring property owners. The smaller, 3.03 acre parcel is currently undeveloped. It also has no road frontage and access to Heck Hill Road is via the same access easements which service the larger parcel.

4. The Applicants are requesting variances to Sections 300-16, 300-41, and 300-44, of the Zoning Ordinance as noted above. The Applicants wish to re-set the property lines for the existing two (2) tracts in order to allow the current undeveloped parcel to have added to it land with two residences and an accessory building. This, they argue, would lessen the degree of non-conformity of the lots in aggregate, primarily by reducing the number of principal structures on the larger tract. The proposed new lots, if approved, will be 5.26 acres and 10.75 acres in area as shown on Applicants' Exh. 1. The proposed subdivision plan is pending before the Board of Supervisors while this application is pursued and pending its resolution.

5. 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.

6. Stephen M. Waller, Codes Administration Director for Fairview Township, testified concerning the status of the existing and proposed lots under the Zoning Ordinance. He pointed out that while Mr. Westhafer testified to the presence of the current non-conformities at the time of his purchase of the properties in 1987, neither existing lot has been registered with Fairview Township as a non-conforming lot, nor have the non-conforming structures and uses been registered as provided under the Fairview Township Zoning Ordinance Sections 300-77 and 300-78. Mr. Waller further testified that in his opinion the proposed variances would not necessarily reduce the existing non-conformities; although, if granted, the variances would preclude the development of the current undeveloped lot, which development is a matter of right under the present lot configurations. Therefore, in that respect, the possibility of additional permitted, but non-conforming, residential uses and structures on these land-locked parcels would be obviated by the re-subdivision of the parcels as proposed.

CONCLUSIONS

1. The Applicants have the burden of establishing their entitlement to the requested dimensional variances in accordance with Fairview Township Zoning Ordinance Section 300-99.E (4).

2. On the basis of the testimony and documentary evidence presented, the Board concludes that under the unique circumstances of the existing non-conformities of these parcels, the Applicants have established entitlement to the variances requested to allow the proposed re-subdivision, subject, however, to the condition that the Applicants apply for, and obtain, certificates of non-conformity, consistent with the testimony presented by Mr. Westhafer at the

hearing, for each tract which is the subject of this Application. If this condition is not met by the Applicants, the application for variances is denied.

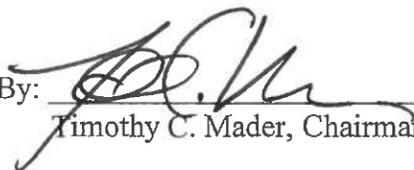
DECISION

On the basis of the foregoing findings and conclusions and on the basis of all the testimony and evidence presented to the Board at the hearing, the request for variances to allow the re-subdivision of the Applicants' existing parcels, as proposed on Applicants' Exh. 1, is granted subject to the Applicants successfully applying for, and obtaining, certificates of non-conformity with respect to the structures and uses for the two existing tracts which are the subject of this Application. If the condition cannot be met, the application for variances is denied.

The Application was granted as stated upon the motion of Mr. Mader, seconded by Mr. Bashore, and adopted 3-0 by the Board Members present and voting.

FAIRVIEW TOWNSHIP ZONING HEARING BOARD

Dated: October 26 2017

By:  _____
Timothy C. Mader, Chairman

Distribution: Brian C. Linsenbach, Esquire, *Attorney for Applicants*