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2014-01

September 15, 2014

Kenneth M. Grim
5931 W. Canal Road
Thomasville, PA 17364

RE: Paradise Township Zoning Hearing Board Decision

Dear Mr. Grim:

Enclosed is the decision of the Paradise Township Zoning Hearing Board rendered on September 4, 2014, and entered on September 15, 2014 (the "Decision") denying the Application for Variance of Section 503.D. of the Paradise Township Zoning Ordinance that requires a minimum lot area of five (5) acres for a single family detached dwelling (as set forth more fully in the Decision) on your 5931 W. Canal Road property.

You have the right to appeal this action to the Court of Common Pleas of York County, Pennsylvania, within thirty (30) days of the date of the entry of this written decision.

Very truly yours,

STOCK AND LEADER

Peter T. Ruth, Esquire

PTR:dms

Enclosure

cc (w/enclosure):

Rodney Eisenhart, Secretary

Laverne Seibert, Chairman

Gary L. Burgard, Vice Chairman

Wayne Smith, Zoning and Codes Enforcement Officer

**DECISION OF THE
PARADISE TOWNSHIP ZONING HEARING BOARD
YORK COUNTY, PENNSYLVANIA**

Applicants: Kenneth M. Grim **Location:** 5931 W. Canal Road
5931 W. Canal Road Thomasville, PA 17364
Thomasville, PA 17364 Paradise Township

Property Owner: Kenneth M. Grim

Application No.: 2014-01 **Tax Reference:** Map HD, Parcel 21C

Date of Hearing: September 4, 2014 **Zone:** Rural Conservation

DECISION

I. FINDINGS OF FACT.

The Applicant is Kenneth M. Grim ("Applicant") of 5931 W. Canal Road, Thomasville, Pennsylvania 17364 ("Property"). The Applicant owns the Property which is 2.00 acres, gross. The Applicant requests a Variance of Section 503.D. of the Paradise Township Zoning Ordinance that requires a minimum lot area of five (5) acres for a single family detached dwelling.

The Applicant filed an Application for Variance with Paradise Township on August 12, 2014. The Applicant's request for a Variance was duly advertised and the Property was posted according to law. All adjoining property owners were notified of the time and place of the hearing in accordance with the Pennsylvania Municipalities Planning Code (the "MPC") and the Paradise Township Zoning Ordinance (the "Ordinance"). The Applicant was present and testified at the hearing. Clark Craumer, PLS, of Clark P. Craumer, L.L.C., Land Surveying and Design, with an address of 65 Protectory Road, Abbottstown, Pennsylvania 17301, also appeared and testified on behalf of the Applicant. The Applicant's request for a Variance was forwarded to the Paradise Township Planning Commission ("Commission"), which reviewed the Application and submitted comments to the Paradise Township Zoning Hearing Board

("Board"). The Board took those comments under advisement in making its decision on the merits of the instant matter. The hearing on Applicant's request was conducted by the Board on September 4, 2014 (hereinafter referred to as the "Hearing").

Mr. Craumer testified at the Hearing that pursuant to a 1994 subdivision plan, identified as Exhibit "B" (hereinafter the "Subdivision Plan"), the Property was subdivided out of the adjoining farm land to the North of the Property. The original goal was to establish the Property as an independent parcel of land; however, because of the weather and the inability to perform soil tests, that could not be done at that time. Accordingly, the Subdivision Plan contained notes that stated "Lot 2 (the Property), as shown, is to be deeded and become an integral, non-separable part of lands of Kenneth M. Grim, recorded in Deed Book 62-E, Page 1,030." The notes in the Subdivision Plan further stated "Lot 2 (the Property), as shown, cannot be sold as a building lot." It should be noted that Applicant signed the Subdivision Plan acknowledging that he "agree[s] to purchase Lot 2 (the Property) and deed said lot as an integral part of [his] presently owned lands, (Deed Book 62-E, Page 1,030) as shown hereon." It should further be noted that Applicant's Deed for the Property incorporated the Subdivision Plan notes and requirements as deed restrictions. A copy of Applicant's Deed to the Property was admitted at the Hearing as Exhibit "D."

Mr. Craumer submitted Exhibit "A" which outlined the Property and the adjoining properties to show the specific Property boundaries. In 1995, Paradise Township changed its Zoning Ordinance to designate the Property and surrounding area as the Rural Conservation zoning district, which requires a minimum lot size of five (5) acres for a single family detached dwelling. Applicant testified that he was unaware of the zoning change in 1995, despite the

requisite advertisements and notices undertaken by Paradise Township prior to such change. Mr. Craumer further testified that Beaver Creek Road bisects the Property, creating an irregularity and unique physical condition on the Property.

Applicant further testified that he now desires to subdivide the Property into a stand-alone 2.00 acre lot, and eventually sell the Property as a building lot. Accordingly, he is seeking the instant variance, and if successful, will submit a new subdivision plan to accomplish the foregoing. Additionally, Applicant testified that many of the surrounding properties, also within the Rural Conservation District, currently have single family detached dwellings on lots of less than five (5) acres.

Applicant and Mr. Craumer were questioned by the Board at length regarding whether the instant application meets the Variance requirements as set forth in the Ordinance and the MPC. The Board pointed out that in order to comply with the Ordinance and the MPC the Applicant must meet all Variance requirements. The Board inquired as to whether additional lands could be acquired from adjoining property owners in order to meet the five (5) acre minimum lot size requirement. Applicant and Mr. Craumer testified that the only adjoining property suitable for such acquisition is the farm to the North of the Property, owned by Applicant's relative. The farm, however, is in the Farm and Natural Lands Trust (the "Trust"), and neither Applicant nor Mr. Craumer believed any portion could be acquired without violating the rules and regulations of the Trust.

Mr. Wayne Smith, Township Zoning Officer, testified that the Property was duly posted and advertised according to law. Mr. Smith further noted that the Property was located in the Rural Conservation District, which requires a five (5) acre minimum lot size with fifty (50') foot

setbacks for all structures. Mr. Smith submitted the lot size requirements from the Ordinance, and the same was admitted at the Hearing, as Exhibit "F."

Barry Schuchart, Paradise Township Planning Commission member, testified that the Planning Commission met on August 25, 2014 to discuss the Applicant's Application. Applicant attended that meeting. Mr. Schuchart ultimately read the Planning Commission's letter into the record, which was admitted at the Hearing as Exhibit "E," specifically noting the following:

- a) The hardship appears to be self-created as a result of the Applicant choosing to add the Property to his existing lands as a "non-separable add-on."
- b) The hardship appears to be financial in nature because the Applicant is requesting the variance merely to subdivide the Property from Applicant's remaining property so the Property can be sold as a building lot, or built upon and then sold.
- c) The Subdivision Plan contains notes, incorporated into the Applicant's deed as deed restrictions, requiring the Property to be an inseparable, integral part of Applicant's other property, and was not to be sold as a building lot.

There were no appearances made in favor of or opposition to the Application.

II. CONCLUSIONS OF LAW.

The standards for a variance are set forth in Section 1706.C. of the Ordinance, as well as Section 910.2 of the MPC (53 P.S. § 10910.2). The Board can only grant a variance if the following findings of fact are made:

- 1) There are unique physical circumstances or conditions, including (a) irregularity, narrowness, or shallowness of lot size or shape, or (b) 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 the Zoning Ordinance in the neighborhood or district in which the property is located.

- 2) 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 Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- 3) The unnecessary hardship has not been created by the appellant.
- 4) 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.
- 5) 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.

A zoning hearing board must consider each of the separate requirements for a variance and find that the applicant has met its burden with respect to all. *Larsen v. Zoning Board of Adjustment*, 672 A.2d 286 (Pa. 1996). The party seeking a variance bears the burden of proving the justification for its grant. *Valley View Civic Association v. Zoning Board of Adjustment*, 462 A.2d 637 (Pa. 1983). Further, in order to establish the right to a variance, the applicant must show that the zoning ordinance uniquely burdens the property with an unnecessary hardship and that the variance would not adversely affect the public health, safety, or welfare. *Vanguard v. Zoning Hearing Board*, 568 A.2d 703 (Pa. Commw. Ct. 1989). Finally, an economic or financial hardship, will not, in and of itself, sustain the grant of a variance. *City of Pittsburgh v. Zoning Bd. of Adjustment of City of Pittsburgh*, 559 A.2d 896, 903-04 (Pa. 1989).

Based on the foregoing, the Board is of the opinion that the Applicant has failed to meet its burden with respect to all of the requirements set forth in the MPC and the Ordinance regarding variances.

The unique physical circumstance cited by the Applicant and Mr. Craumer was that Beaver Creek Road bisected the Property, making it difficult to utilize the Property in any meaningful or reasonable way. The gist of Applicant's and Mr. Craumer's testimony was the size and dimensions of the lot created an undue hardship, to wit, that Applicant could not subdivide and sell the Property as a developable building lot. As a result, the Property could not be developed in strict conformity with the Ordinance to enable a reasonable use of the Property. Such testimony is contradictory to the fact that since the Property originally became part of Applicant's other lands in 1994, Applicant has apparently been using the Property for some reasonable use; otherwise, an application for a variance would have been filed earlier, rather than twenty (20) years after the original Subdivision Plan was implemented. Put simply, for the past twenty (20) years, Applicant has been making a reasonable use of the Property.

The Board is also of the opinion that the unnecessary hardship was created by the Applicant. As per the Subdivision Plan in 1994, Applicant agreed to make the Property an integral and non-separable part of Applicant's other Property. Further, Applicant agreed to never sell the Property as a building lot. Accordingly, by agreeing to such stipulations, and further, by agreeing to purchase the Property as an integral and non-separable part of Applicant's other Property, the hardship now complained of was created by Applicant. Although never testified to directly at the Hearing, Applicant appears to be of the opinion that the change in the zoning inflicted the unnecessary hardship, and that it was not in fact self-created. Based on the

testimony and evidence presented, however, as outlined above, the Board finds that the hardship was self-created by the Applicant.

Additionally, by Applicant's own testimony and admission, the hardship is purely and indisputably financial in nature. *See City of Pittsburgh*, 559 A.2d at 903-04. Applicant merely wants to subdivide the Property and sell the same as a building lot. To be clear, the Board is not restricting the method by which the Applicant has used the Property for the past twenty (20) years.

The Board is satisfied that the variance would 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. In fact, many of the properties situate on the corner of Canal Road and Beaver Creek Road are single family detached dwellings. Similarly, the requested relief is most likely the minimum variance that will afford relief to the Applicant.

The law is well settled, however, that the party seeking the variance bears the burden of proving the justification for the grant of the variance, and that all five requirements as set forth in the MPC and the Ordinance have been met. In the instant case, as set forth in more detail above, Applicant has failed to do so. At best, Applicant has met three (3) of the five (5) requirements. Furthermore, the unnecessary hardship is merely financial in nature.

For these reasons, the board is unable to grant the requested variance.

III. DECISION.

The Zoning Hearing Board of Paradise Township, based upon the testimony of all witnesses, the Application as filed by the Applicant, the exhibits presented at the Hearing, and specifically relying thereon, hereby unanimously deny the Applicant's request for a Variance.

ZONING HEARING BOARD OF
PARADISE TOWNSHIP

By: /s/ Laverne Seibert
Laverne Seibert, Chairman

/s/ Gary Burgard
Gary Burgard, Vice-Chairman

/s/ Rodney Eisenhart
Rodney Eisenhart, Secretary

Date: _____

Any party aggrieved by this action may appeal to the Court of Common Pleas of York County, Pennsylvania within thirty (30) days of the date of the entry of this written decision.