

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

<b>Applicants:</b>	Leroy E. Walker and Brenda S. Walker 6898 Oak Lane Thomasville, PA 17364	<b>Location:</b>	6898 Oak Lane Thomasville, PA 17364 Paradise Township
<b>Property Owner:</b>	Leroy E. Walker and Brenda S. Walker		
<b>Application No.:</b>	2014-02	<b>Tax UPI:</b>	Map HE, Parcel 15
<b>Date of Hearing:</b>	November 6, 2014	<b>Zone:</b>	Agricultural/Conical Surface

**DECISION**

**I. FINDINGS OF FACT.**

The Applicants are Leroy E. Walker and Brenda S. Walker (collectively the "Applicant") of 6898 Oak Lane, Thomasville, Pennsylvania 17364 (the "Property"). The Applicant owns the Property which is 102.6 acres. The Applicant requests, pursuant to Section 402.B. of the Paradise Township Zoning Ordinance (the "Ordinance"), a Special Exception to construct an Additional Farm Dwelling, in accordance with Section 1302 of the Ordinance. Applicant further requests a Variance of the requirements of Section 1302, subsections C. and E. of the Ordinance, that require a) the dwelling to be temporary and accessory in nature, a mobile home or manufactured home that is capable of being removed if no longer used or needed, and b) the removal of the dwelling within six (6) months following the date the dwelling is no longer used.

The Applicant filed the Application for a Special Exception and a Variance with Paradise Township on October 16, 2014. The Applicant's request for a Special Exception and 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 Ordinance. The Applicant was present and

testified at the hearing. Michael W. Davis, Esquire, of Barley Snyder, Attorneys at Law, with an address of 126 East King Street, Lancaster, Pennsylvania 17602, represented the Applicant. The Applicant's request for a Special Exception and 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 November 6, 2014 (hereinafter referred to as the "Hearing").

Attorney Davis questioned the Applicant at the Hearing regarding the requirements of the Ordinance. The Applicant purchased the 102.6 acre Property in December of 1994, as evidenced by the Applicant's deed, submitted as Applicant's Exhibit "1." The Property is located in the Agricultural Zone within the Conical Surface Zone of the Airport Safety Overlay District.

The Applicant submitted Applicant's Exhibit "2," the York County Tax Assessment map for the Property, on which Applicant indicated the existing location of his residence, and the existing dairy barn for Applicant's dairy operation. Applicant now seeks to place the additional farm dwelling on the Property pursuant to his Application before the Board, in which Applicant's son, daughter-in-law, and three grandchildren will reside. Applicant currently operates a dairy farm operation with approximately three hundred (300) head of dairy cattle (the "Dairy Operation"). Applicant's son and daughter-in-law are both full time employees of the Dairy Operation.

Upon questioning from Attorney Davis, Applicant testified that the additional farm dwelling will be the only additional dwelling on the Property; both his son and daughter-in-law are and will continue to be employed full time at the Dairy Operation; the additional dwelling

will be supplied with an approved sewage disposal system, and an approved water service system; the additional dwelling will have three (3) bedrooms; and that the additional dwelling will only house five (5) residents.

In regard to the Variance request of the non-permanent structure requirements of the Ordinance, Attorney Davis advised that although a "mobile home" is specifically defined in the Ordinance, a "manufactured home" is not specifically defined therein. Applicant testified that his son and daughter-in-law have been employed at the Dairy Operation for approximately twenty (20) years and ten (10) years, respectively. Approximately three (3) years ago, the Dairy Operation expanded to the current three (300) head of dairy cattle, each of which require milking three (3) times per day. Accordingly, the additional farm dwelling is necessary so that Applicant's son and daughter-in-law can assist with the Dairy Operation's workload.

Applicant further testified that the Property's existing acreage would support a home in conformity with the adjoining property owners. Similarly, there would be no negative impact on or impairment of use of the adjoining properties. The primary use of the Property will remain Agricultural, and as such, will not alter the essential character of the neighborhood. Lastly, Applicant testified that it is common in the agricultural community for family to live on the farm, and that not having his son's family reside on the farm results in an unnecessary hardship.

Applicant testified that on March 6, 2001, Applicant entered into a Conservation Easement with York County, Pennsylvania (the "Conservation Easement"), subjecting the Property to certain conditions, covenants, and restrictions, including restrictions on the ability to subdivide the Property. Specifically, the Conservation Easement was subject to the York County Agricultural Land Preservation Program and the Subdivision/Land Development Guidelines therein (the "Guidelines"). The Guidelines provide, in pertinent part, that "No parcel of less than

52 acres may be created by subdivision or shall remain after subdivision of the original parcel. Therefore, no subdivision may occur on any parcel with less than 104 acres.” See Guidelines at ¶ 2.c.iv. Therefore, Applicant’s 102.6 acres could not be subdivided in accordance with the Conservation Easement and the Guidelines, representing an additional hardship. The Conservation Easement and the Guidelines were submitted at the Hearing as Applicant’s Exhibits 3 and 4, respectively. Finally, Applicant testified that the requested relief is the minimum variance that will afford relief, and as such, represents the least modification possible.

Attorney Davis advised, on behalf of the Applicant, that if the Variance would be granted, Applicant would be willing to have as a condition of such approval, a requirement that a direct relative of the Property owner, or an employee of the Dairy Operation. Applicant submitted Applicant’s Exhibit 5, which are the plans for the proposed structure. Upon questioning by Board Chairman Laverne Scibert, Applicant testified that the proposed structure is “stick-built” and will not be a manufactured or mobile home, stating that a stick-built home “looks nicer” than any manufactured or mobile home. Further, Applicant testified that he will have a new sand mound and well constructed for the proposed additional dwelling, and that the additional dwelling will not tap into the sewer or water system currently utilized by Applicant’s residence.

Mr. Wayne Smith, Township Zoning Officer, testified that the Property was duly posted and advertised according to law. Attorney Davis advised that Applicant had no objections to the posting or notice requirements. Robert Nivens, Paradise Township Planning Commission member, testified that the Planning Commission met on October 27, 2014 to discuss the Applicant’s Application. As an initial matter, Mr. Nivens stated that although there is no express definition of a “manufactured home” in the Ordinance, the Ordinance does provide that any such

words that are not specifically defined by the Ordinance shall be presumed to be used in their ordinary context. Mr. Nivens then provided a definition for manufactured home as that term is defined in the Uniform Construction Code.

The Commission recommended that the Applicant should provide evidence that his Property is larger than fifty (50) acres, and that the additional dwelling will comply with the requirements of Section 1302 of the Ordinance. Further, Mr. Nivens testified that the Applicant should provide testimony regarding the nature and type of construction of the additional dwelling, as well as how the dwelling can be removed if and when it is required to be removed.

Mr. Nivens testified that he was satisfied with the Applicant's testimony in regard to the Commission's aforementioned recommendations. It is important to note that Mr. Nivens stated that any structure could be removed regardless of whether it is a manufactured home, a mobile home, or a stick-built home. Further, the effort required to remove a manufactured home and a stick-built home are almost identical. Lastly, Mr. Nivens is also an adjoining property owner, with an address of 6883 Pleasant View Drive, Thomasville, Pennsylvania 17364, and as such, stated that he was in favor of the Applicant's request.

Mr. Greg Kecken, an adjoining property owner with an address of 6861 Pleasant View Drive, Thomasville, Pennsylvania 17364, testified that he was in favor of the Applicant's request. He attended the hearing to determine where the additional dwelling was to be located.

There were no appearances made in opposition to the Application.

## **II. CONCLUSIONS OF LAW.**

### **SPECIAL EXCEPTION**

The standards for a special exception for an additional farm dwelling are set forth in Section 1302 of the Ordinance. Those requirements are as follows:

- A. Minimum lot size of 50 acres;
- B. Only one additional dwelling is permitted per lot;
- C. The dwelling must be temporary and clearly accessory in nature. It shall be a mobile home or manufactured home capable of being removed if no longer used or needed;
- D. At least one resident of the dwelling shall be employed full time on the farm on which it is located;
- E. In the event that the farming operation to which the dwelling unit is accessory is discontinued, the dwelling unit shall be removed within six (6) months following the date of discontinuance;
- F. The dwelling shall be supplied with an approved sewage disposal system and water service;
- G. The dwelling shall have a maximum of three (3) bedrooms; and
- H. The number of persons allowed to use the dwelling shall be two (2) times the number of bedrooms available in the dwelling unit.

Applicant testified that a) the Property is 102.6 acres; b) only one (1) additional dwelling will be constructed; c) his son and daughter-in-law are both employed full time at the Dairy Operation on the Property; d) the dwelling will be supplied with an approved sewage disposal system and water service; e) the dwelling will have three (3) bedrooms; and f) only five (5) people will reside in the additional dwelling (Applicant's son, daughter-in-law, and three grandchildren). Accordingly, the Board is of the opinion that the Applicant has met its burden in regard to the Special Exception requirements of Section 1302, subsections A, B, D, F, G, and H.

### VARIANCE

Applicant seeks a variance from the requirements of Section 1302, subsections C. and E., and the board must accordingly determine whether the Applicant is entitled to such relief. 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 met 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 are the inability to have his son and daughter-in-law, full time employees, reside on the Property and assist with the Dairy Operation. Any possibility of subdividing the Property to provide for an additional dwelling is thwarted by the requirements of the Conservation Easement and the Guidelines. The Board is of the opinion that such hardship is created by the provisions of the Ordinance and not by the Applicant.

Further, as a result of the aforementioned hardship, the Property cannot be developed in strict accordance with the Ordinance's requirements. The Property is located within the Agricultural Zone where family farm operations are very prevalent and having employees reside in close proximity to the operation is desirable, if not necessary. As such, this variance will not alter the essential character of the neighborhood, nor will it be detrimental to the public welfare, or the appropriate use or development of adjoining properties.

The law is well settled 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 met such burden. The Board is further of the opinion that an appropriate condition to be placed on its grant of the Variance as requested by the Applicant is to require that at least one (1) of the occupants of the additional dwelling must be a direct relative or employee of the Property owner.

For these reasons, the Board will grant the Special Exception, finding that the Applicant has met its burden in regard to Section 1302, subsections A, B, D, F, G, and H. Further, the Board will grant the requested Variance as it relates to Section 1302, subsection C. and E.

### **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 grant the Applicant's request for a Special Exception pursuant to Section 1302, subsections A, B, D, F, G, and H, and further hereby unanimously grant Applicant's request for a Variance as it relates to Section 1302, subsection C

and E subject to the condition that at least one (1) of the occupants of the additional dwelling must be a direct relative or an employec of the Property owner who otherwise meets the requirements of the Ordinance. This relief represents the minimum relief necessary to permit the Applicant to achieve zoning compliance. All other representations made by the Applicant concerning the proposed additional dwelling remain applicable.

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: 11-10-14

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.