

HANOVER TOWNSHIP ZONING HEARING BOARD

OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Application of : B. Land Co., LLC
Application Dated : March 26, 2014
Property : South Side of Stoke Park Rd.

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, May 1, 2014, and rendering its oral decision denying the requested variances, hereby makes the following findings of fact and conclusions of law in support thereof:

1. The subject property is located on the south side of Stoke Park Road, immediately west of Hanover Ridge Subdivision, and is identified as Uniform Tax Parcel No. M6-22-5B, located in an R1-S – Suburban Residential District.

2. The owner of the property is Martin S. Hlay and Carolee Hlay. The applicant is B. Land Co., LLC, which is the purchaser of the property under Agreement of Sale.

3. Testifying on behalf of the applicant and also acting as attorney for the applicant was Dennis Benner who indicated that he is a principal in B. Land Co., LLC.

4. Also testifying on behalf of the applicant was Darrin Heckman, Project Engineer from Lehigh Engineering Associates, Inc.

5. The application as submitted included a Sketch Plan for Subdivision Entitled: Hanover Woods, with a date of July 3, 2013 and no revision dates.

6. Throughout the course of the hearing the applicant introduced the following exhibits:

A-1 Sketch Plan entitled Hanover Woods Entrance Detail dated July 1, 2013 with no revision dates.

A-2(A) Existing site photos as labeled thereon consisting of 11 views dated July 1, 2013 with no revision dates.

A-2(B) Plan depicting possible preservation of wooded area around three sides of the perimeter of the lot, dated July 1, 2013 with no revision dates.

A-2(C) Unsigned letter with the heading Hanover Township Northampton County Shade Tree Advisory Board to the Board of Supervisors of Hanover Township dated February 25, 2014.

A-3 Sketch Plan for Subdivision depicting possible areas of woodland to be preserved dated July 1, 2013 with no revision date.

7. According to the testimony, the applicant proposes a 15 lot subdivision of the subject parcel with varying lot sizes but including 7 lots between 12,000 and 13,000 sq. ft. None of the lots would be 24,000 sq. ft.

8. The applicant is also proposing a boulevard street which will contain trees in the center.

9. The lot widths and depths vary and the applicant is requesting dimensional variances from the ordinance as hereinafter set forth. None of the lots have a lot width of 180 ft.

10. In addition, the applicant desires to have an entrance to the subdivision employing landscaping and a fence and seeks a variance from the provisions of the ordinance prohibiting fences within the front yard.

11. According to the testimony, Exhibit A-2(B) depicts a woodland area being kept in tact of an approximate depth of 23 ft. around three of the perimeter lot lines which represents, according to the engineer, 1.3 acres or about 20%.

12. It was stated that Exhibit A-3 depicts 2.1 acres being preserved for woodlands or about 30%, although according to the testimony the exact dimensions of what would be preserved and not preserved would require further study and examination as to the exact location of the road and planning around existing trees.

13. According to the testimony there would be a Homeowners Association created which would be responsible for maintaining the fence area in the front, the center area of the boulevard and the trees that are to be preserved on the property.

14. Mr. Benner indicated that his intent is to minimize the amount of trees that are removed and to have this development be in harmony with the existing neighborhood.

15. Mr. Hlay was asked to identify the deed to the property which he received from Blanche E. Koehler dated October 30, 1992 and recorded in Recorder of Deeds Book 878, Page 334, which was marked Exhibit Z-1. This deed refers to covenants and restrictions that appear on the recorded plan and recorded covenant.

16. Mr. Hlay was also asked to identify a document entitled Covenant Running With the Land, Blanche E. Koehler Subdivision dated August 11, 1992 and recorded in Recorder of Deeds Book 454, Page 273, and marked at the hearing as Exhibit Z-2. This covenant in relevant part states that trees shall not be removed, excepting for trees needed to be removed in order to construct one single family residence, without prior written consent. The applicant did not present any written consent of the Township with respect to the removal of more trees, although the Township obviously was notified of the hearing and was not present to voice any objection.

17. The covenants also indicate that the waivers that were approved as to the subdivision wherein Hlay was able to take the tract were not deemed to constitute a continuing waiver, nor constitute a waiver of the Township's powers or rights to require conformance with the Township ordinances or regulations in the future.

18. Numerous residents in the area addressed the Board and indicated their concern over the removal of these trees. Some of them indicated that they were advised that there were certain restrictions and covenants in place that would prevent the trees from being removed.

19. Some of them even indicated that they paid a premium for their lots because they were on the border of this subject lot.

20. Sect. 185-22.F. of the ordinance governs woodlands. The applicant does not dispute that this section would be applicable, and in fact acknowledges that the percentage of property covered by woodland in the present case is in the area of 50-100% as it relates to the table as set forth in F.(2).

21. The effect of this section is to double the lot size and width requirements that would otherwise be applicable in the zone where the woodlands are located and to half the density and coverage factor.

22. The dimensional requirements for an R1-S District are set forth in Sect. 185-26.F.(2). The normal minimum lot area is 12,000 sq. ft., and therefore the applicable minimum lot area for the present subdivision is 24,000 sq. ft.

23. The normal minimum lot width is 90 ft. and therefore with the woodland provisions a minimum lot width of 180 ft. is required.

24. The normal maximum lot coverage is 33% and with the woodland provisions a maximum lot coverage of only 16-1/2 % is permitted.

25. The normal minimum side yard setback is 10% of the lot width. With the woodland provisions which require a minimum lot width of 180 ft., that would mean a minimum side yard of at least 18 ft. The applicant desires relief from that provision to have a minimum side yard of 9 ft. in all cases.

26. The normal front yard requirements of 35 ft. are not affected by the woodland provisions, however the applicant desires a variance from that provision to have a minimum front yard of 25 ft.

27. The normal minimum rear yard requirement of 40 ft. is also not affected by the woodland provisions but the applicant desires a variance from that provision to permit a minimum rear yard of 25 ft.

28. The applicant through its testimony corrected the application to indicate that its buildings rather than having a maximum height of 25 ft. could have a maximum height of 35 ft., although that height is permitted under the ordinance and therefore this change does not create the need for any additional variances.

29. It is also noted that § 185-22.F. requires that the applicant submit a site plan for the review by the Shade Tree Commission and the Planning Commission, and approval by the Board of Supervisors. The applicant indicated that the site plan that was marked Exhibit A-3 was submitted to the Shade Tree Commission and the Planning Commission. The applicant did not indicate whether it submitted the Site Plan to the Supervisors.

30. The applicant states that the removal of trees is permitted under Sect. 185-22.F., provided that 20% is retained. It is noted that Sect. 185-22.F.(4) indicates that the 20% shall be calculated only after the lot size criteria of this chapter has been met as set forth above.

31. Sect. 185-14.F.(1) provides that a fence or hedge shall be permitted in the side yard but not in the front yard. Given the proposed layout of the plan whether this is a front yard or a side yard where the proposed fence is to be located is not entirely clear. It is located along the front of the lot as

it now exists, but presumably the homes themselves will be facing the new street with their sides to Stoke Park Road. In light of the decision of the Board as it relates to hardship and the grant of variances, it is not necessary to resolve this point.

32. Contrary to the assertions of the applicant that it is their intent to preserve the maximum amount of trees, the Board is of the opinion that the applicant has for the most part failed to adhere to the woodland provisions of the ordinance. The proposed lots are not in compliance with the dimensional requirements as it relates to woodlands, and are being developed in almost the same manner as though it were a non-woodland property.

33. The applicant argues that it is entitled to a variance because the subject lot is of narrow width in relationship to its length. However the Hlays, the present owners of the property, purchased it as part of the subdivision wherein the lot width was narrowed to what it is today. Therefore it would appear that any such hardship as it relates to the lot width has been self-created by the Hlays or their immediate predecessor.

34. Even more importantly, while the lack of lot width might have some correlation to the requested reduction of the front yards and rear yards, it has little correlation to the failure to have the minimum lot areas and lot widths and density requirements in a woodland tract as required under the ordinance. With regards to those requirements it would appear that the regulations which the applicant would seek to modify are simply the normal impact of those woodland regulations as provided for in the ordinance.

35. Moreover, the Board does not believe that the applicant has met its burden with respect to demonstrating that the relief being sought is the minimum relief under the ordinance. It is noted that the immediate adjoining lot to the west which was also created at the time of this subdivision is similarly elongated and has as its principal use a single family dwelling. Certainly a single family dwelling on this lot is a reasonable use and indeed apparently what was contemplated by Mr. Hlay based on his testimony and the language of the covenant at the time he purchased the property.

36. This is not to say Mr. Hlay cannot seek relief and propose a different or more extensive development than what was set forth in his covenant, but the present plan in the opinion of the Board simply does not adhere to the woodland provisions and the overall intent to put 15 dwellings on this property even with the expressed promise that as many mature trees will be saved as possible is a level of density that is totally contrary to the woodland provisions of the ordinance.

WHEREFORE, the Hanover Township Zoning Hearing Board hereby denies the requested variances.

HANOVER TOWNSHIP ZONING HEARING BOARD

By: Paul A. Balla
Paul A. Balla, Chairman

Dated: June 12, 2014