

BEFORE THE ZONING HEARING BOARD
OF
SCHUYLKILL COUNTY

RE: Application of JMAC Realty for Dimensional Variances.

BEFORE: Eric Seitzinger, David Ambrose, and Daniel Daub, Members of the Schuylkill County Zoning Hearing Board (the "Board").

MINUTES OF HEARING

Name of Applicant	JMAC Realty 773 South Route 183 Schuylkill Haven, Pa
Location of Subject Property	67 Fox Road Washington Township Schuylkill County, Pa UPI No. 33-12-0052.002
Owner of Property	Applicant
Zoning Classification	A (Agricultural)
Date of Hearings	May 2, 2013; June 6, 2013
Place of Hearings	Commissioner's Board Room Schuylkill County Courthouse Pottsville, Pa
Appearance (for Board)	Christopher W. Hobbs, Esq.
Appearances (for Applicant)	William C. Reiley, Esquire
Appearances (for Washington Township)	Richard J. Wiest, Esquire
Protestants	Robert Free 171 Fox Road Schuylkill Haven, Pa Henry Schott 147 Fox Road Schuylkill Haven, Pa Washington Township 225 Frantz Road Pine Grove, PA 17963

BEFORE THE ZONING HEARING BOARD
OF
SCHUYLKILL COUNTY

RE: Application of JMAC Realty for Dimensional Variances.

FINDINGS OF FACT

After hearing all interested parties and consideration of the evidence presented, the Board finds as follows:

1. JMAC Realty ("Applicant") is the owner of the subject property ("Property") situate at 167 Fox Road, Washington Township, Schuylkill County, Pennsylvania and identified by UPI No. 33-12-0052.002.
2. The Property is located in an A (Agricultural) District under the Schuylkill County Zoning Ordinance (the "Ordinance").
3. The Applicant applied for dimensional variances that, if approved, will permit the Applicant to subdivide the subject Property into two (2) lots that would not strictly conform with the minimum lot area and minimal lot width requirements in an Agricultural District.
4. If relief is granted, the proposed lot #1 will be 35,385 square feet, 8,175 square feet less than the required 1 acre minimum.
5. If approved, proposed lot #2 will have a frontage width of 120 feet, 30 feet less than the 150 feet minimum lot width requirement.
6. A hearing was scheduled for May 2, 2013 at 7:00 p.m.
7. Public notice of the hearing was given by advertisement in the Pottsville Republican Newspaper on April 15, 2013 and April 22, 2013.
8. Notice was given by mail to the parties; the notice being sent on May 1, 2013.
9. Notice was given by mail to the host municipality, Washington Township, on May 1, 2013.
10. Notice was posted on the Property on April 15, 2013.
11. Notice was given by mail to the primary last known owner of each lot that is abutting or immediately across the street from the Property. Notice was

sent late so the Board scheduled a second hearing on June 6, 2013 to provide any objectors the opportunity to be heard.

12. A hearing was held on May 2, 2013 at which time the Applicant presented the testimony of its surveyor, Diane Lennick, P.L.S. and James McNulty, owner.
13. A hearing was held on June 6, 2013 at which time Washington Township, Robert Free, and Henry Schott lodged objections to the dimensional variance requests.
14. Although the subject Property is slightly in excess of two (2) acres, it is uniquely shaped thus cannot be evenly divided for residential purposes and provide both proposed lots with an area in excess of 1 acre as required by the Ordinance.
15. Because of the unique shape of the Property, if subdivided, the second lot would have road footage of 120 feet which is less than the 150 feet width requirement of the Ordinance.
16. The unique shape of the subject property causes the Applicant a hardship which the Applicant did not create and which cannot be cured but for the award of dimensional variances.
17. If authorized, the dimensional variances 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.
18. If authorized, the proposed dimensional variances will represent the minimum variances that will afford relief and will represent the least modification possible of the regulation in issue.
19. Washington Township's objections are based on a legal argument that the Applicant does not suffer a hardship and a safety concern about the locations of the driveways that will provide access to the 2 lots if the subdivision is approved. Washington Township did not provide any witnesses or substantive evidence.
20. Washington Township has an ordinance that sets forth requirements on the location of driveways.
21. Protestant Robert Free testified that there is a minimum 1 acre lot requirement in the Township and was concerned that one of the two proposed lots would be less than the required amount but did not submit any substantive evidence supporting his concerns. In addition, he did not

explain how reduction of lot size in the proposed amount would have a detrimental effect on the neighborhood where the property is located.

22. Protestant Henry Schott testified he was concerned about the locations of sand mounds as well as the effect on his well drinking water but did not submit any substantive evidence supporting his concerns.

CONCLUSIONS OF LAW

1. The Board is empowered with exclusive jurisdiction to hear and render final adjudications in variance requests.
2. The Board finds the testimony of Diane Lennick and James McNulty credible.
3. The Board does not find the concerns of the three (3) Protestants credible as there was not any substantive evidence submitted supporting safety concerns that approval of the dimensional variances would negatively impact surrounding properties.
4. The Applicant has the burden of satisfying the review criteria of §111(D)(3) of the Ordinance to be granted a variance.

Discussion:

While it is becoming more and more common for applicants to appear before the Board under the misguided impression that dimensional variances will be granted as a matter of right without being prepared to offer substantive testimony or evidence in support of their application, the Board notes that though the testimony of Ms. Lennick and Mr. McNulty, the Applicant did submit evidence in support of each prong required to justify the award of a variance. While the Board empathizes with the concerns of the protestants, no substantive evidence was elicited from Mr. Free, Mr. Schott, or Washington Township that supported any of their concerns. In Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721, A.2d 43, 47-48 (Pa. 1988), the Supreme Court made it clear that while the Applicant still bears the burden of satisfying the standards set forth for a variance, the degree of hardship upon the applicant is relaxed from that of a use variance.

5. The Applicant has satisfied its burden to satisfy the review criteria of §111(D)(3) of the Ordinance to be granted a variance.

DECISION

AND NOW, this ^{11th} ~~6th~~ day of ^{July} ~~June~~, 2013, the Board **GRANTS** the Applicant's request for two (2) dimensional variances consistent with the application and directs the Zoning Officer to issue a permit consistent with this decision.¹



ERIC SEITZINGER, Chairman



DAVID AMBROSE, Member

DANIEL DAUB, Member

¹The Board, at a public hearing, voted to grant the dimensional variance requests on June 6, 2013.