

## Manor Township Zoning Hearing Board Minutes

Wednesday, April 3, 2019

Time: 7:00 p.m.

Chairman, Bradley Singer called the Manor Township Zoning Hearing Board meeting to order in the Manor Township Municipal Building located at 950 West Fairway Drive, Lancaster, PA 17603 on April 3, 2019 at 7:00 p.m. Chairman Singer led those in attendance in the Pledge of Allegiance and introduced the Board.

Members Present: Bradley Singer, Missy Charles, Dennis Funk, and Alex Egner  
Staff Present: Nate Taggart and Michelle Smith  
Township Solicitor: James McManus  
Visitors: See attached Sign-In Sheet

**Previous Month Minutes** – Dennis Funk made a motion to accept the March 6, 2019 meeting minutes as they have been submitted. Missy Charles seconded and the motion carried unanimously.

### Old Business

Chairman Singer explained that tonight the Board will be stating their decisions on the cases that offered testimony at the March 6, 2019 meeting. Testimony has been closed and the Board members individually submitted their opinions and decisions to the Township Solicitor. The Solicitor compiles the decisions and drafts a legal document that includes the Board's decision.

Case #1-2019 – Joshua L. & Brooke E. Wenzel, 12 Chamberlain Ln, Millersville, PA 17551. The applicant is requesting a Variance to section 425-13A (RL Zone - Purpose) to install onsite septic and a well on the property located at 194 Ironstone Ridge Rd, Lancaster, PA 17603, Tax ID Number 410-91125-0-0000. The property is located in the Low-Density Residential (RL) Zone.

Chairman Singer asked if all Board members had time to review the Decision that has been drafted by the Solicitor. All members replied by stating that they did have ample time to read over the Decision. There was no further discussion required by the Board. Mr. McManus summarized the elements of the Decision for those in attendance. He explained that the Decision contains Findings of Facts, Conclusions of Law, and the Proposed Action by the Board. As prepared, the Findings of Facts contain a description, in paragraph form, of the Applicant's proposal that describes the property. The property is identified as an unimproved flag lot as defined in the Zoning Ordinance. It notes that the orientation and configuration of the lot is unique with respect to other properties along Ironstone Ridge Road that are serviced by public sewer and water. It notes that connections to public water and sewer on Ironstone Ridge Road would require costly cuts through the recently resurfaced roadway. The extension of public water and sewer service from Ironstone Ridge Road to the proposed dwelling would be costly and impractical. It also notes that the physical characteristics of the property including its topography, location and lot area are unique, restrict its reasonable development and constitute an unnecessary hardship. The requested variance will not adversely impact the RL district or neighboring properties. It is the minimum necessary for reasonable development of the property for residential use. It notes that it will not adversely affect adjoining neighboring properties or the public welfare nor detract from the

use and enjoyment of nearby properties. It will not change the character of the neighborhood within which the property is located.

As prepared, the Decision would grant the variance to allow the erection of the single family detached dwelling on the property containing approximately 4.336 acres located at 194 Ironstone Ridge Rd utilizing an onsite well and septic system as depicted on the site plan prepared by Custom Home Group dated January 21, 2019 subject to certain conditions. Those conditions would be that the applicant would at all times comply with and adhere to the plans, exhibits and other evidence presented to the Board by the applicants or on their behalf at the hearings held on February 6, 2019 and March 6, 2019. Further, the applicants would comply with all of applicable governmental rules, ordinances and regulations for the provision of onsite water and sewer systems and the use and development of the property.

Chairman Singer asked the Board if there was any further discussion. There was none. Missy Charles made a motion to accept the Decision as prepared. Dennis Funk seconded and the motion carried unanimously. The Board signed two originals, one of which was given to the applicant tonight and the other will be retained in Township files. As a matter of formality, a copy will also be mailed to the applicant on Thursday, April 4, 2019.

Case #2-2019 - Manorvest LLC, 421 N Duke St, Millersville, PA 17551. The applicant is requesting a Special Exception to section 425-114 (Substitution or Replacement) to replace a nonconforming use with another nonconforming use on the property located at 190 W. Charlotte St, Millersville, PA 17551, Tax ID Number 410-36487-0-0000. The property is currently occupied by a commercial business and the applicant proposes to convert the existing building into eight (8) one bedroom apartment units. The property is located in the Medium-Density Residential (RM) Zone.

Chairman Singer asked the Board if there was any discussion before James McManus reviewed the prepared document. The Board had no further discussion. Mr. McManus summarized the Decision as prepared. The Decision contains Findings of Facts, Conclusions of Law, and the Decision. The Findings of Facts are based upon the testimony that was presented at last month's hearing and it recites the elements of the applicants proposal to convert the subject property that was formally being used as an organ repair business into eight one bedroom apartment units as a substitution replacement that is provided for under section 425-114 of the zoning ordinance. The Decision refers to the site plan and floor plans that were prepared by engineer James Koppenhaver attached to the application as Exhibit #1. It identifies the pertinent aspects of the proposed development in terms of the square footage of the proposed units. It notes that there will be an illumination of approximately 3500 square feet of impervious area on the property and the proposed development would change and improve vehicular ingress and egress from the property. None of the improvements that are proposed by way of the apartment development would violate any setback requirement of the RM district. The applicant will provide more off street parking spaces for the proposed use than are required by the zoning ordinance. It also notes that the applicant proposes to landscape the perimeter of the property including a decorative fence/landscape screen along its southern boundary. The applicant proposes to enclose and locate a dumpster within the rear yard setback area of the property. The access from W. Charlotte St. will be improved, the proposed use will not generate noise that will adversely affect neighboring properties, and it will not generate light or glare that will constitute a nuisance to neighboring properties. It will not increase any nonconformity on the property. The proposed use for the apartments is at least as compatible with the surrounding area as the prior commercial business use. In all other respects the property and proposed use comply with all applicable provisions of the zoning

ordinance, it is consistent with purpose and intent of the zoning ordinance and will not detract from the use and enjoyment of nearby properties. It will not substantially change the character of the neighborhood within which it is located. Adequate and appropriate facilities will be provided for the proper operation of the proposed use and it will not impair the integrity of the Townships Comprehensive Plan.

The Decision contains the following and finds that the application for the special exception pursuant to the provisions of Section 425-114 of the zoning ordinance is granted to permit the substitution replacement of the pipe organ restoration business for and into an apartment building containing eight one bedroom dwelling units within the building and property located at 190 W. Charlotte St., Millersville PA. The approval would be subject to the following conditions: The applicant comply at all times with and adhere to the plans, exhibits, and also other evidence presented to the Board by the applicant or on its behalf at the hearing held on March 6, 2019. The applicant shall not expand, substitute or subdivide the apartment use of the property for any purpose or use except in strict conformity with the zoning ordinance. The applicant shall provide at least 22 off street parking spaces for the intended apartment use. The spaces shall be designed in accordance with the specifications set forth in the zoning ordinance. The applicant shall provide a suitable, decorative fence/landscape screen along the southern boundary of the property and the applicant shall comply with other applicable governmental rules, ordinances, and regulations regulating the construction use and occupation of the proposed apartment use.

Chairman Singer asked the Board if there were any questions or discussion regarding the prepared document. There were none. Dennis Funk made a motion to approve the Decision as presented. Missy Charles seconded and the motion carried unanimously. The Board signed two originals, one of which was given to the applicant tonight and the other will be retained in Township files. As a matter of formality, a copy will also be mailed to the applicant and each of the parties of record.

Case No. #6-2017 – Withdrawal of Applications/Appeals of Stewards of the Lower Susquehanna and Ted Evgeniadis as Lower Susquehanna Riverkeeper, et al from the Zoning Officer's Issuance to the Lancaster County Solid Waste Management Authority of the Zoning Permit for Frey Farm Landfill Vertical Expansion and Zoning Permit for the construction of a Leachate Storage Tank on property located at 3049 River Road, Conestoga, Pa. 17516.

Case No. #7-2017 – Withdrawal of Applications/Appeals of Lori and Alan Borys, et al challenging the Validity of Ordinance No. 4-2016 amending the Zoning Ordinance of Manor Township by restating certain definitions, standards and criteria for solid waste disposal and processing facilities and amending the Township's official zoning map.

Mr. McManus stated that these cases were before the Board over a year ago and they involved the Frey Farm Landfill facility. The applications were in the nature of applications and appeals. Case #6-2017 dealt with certain permits that were issued by the Township for projects that began at the landfill. The second appeal dealt with the enactment of the ordinance that the Supervisors allowed to happen. One is a substantive appeal and the other is a validity appeal. The Board met on one occasion and subsequently this matter has been continued. The continuances were posted in the Township building and on the Townships website. Mr. Taggart verified that this was correct and he personally handled the notice to the public of the continuation of any hearing or meeting regarding these matters.

One of the issues on appeal was whether the Board had jurisdiction to hear the applications/appeals because of its failure to hold hearings within 45 days. The applicant consented to an extension, but the landowner did not. This presented some issues that were on appeal to the Court of Common Pleas. There was an unresolved issue that was pending before the court. During this course, the Appellant Applicant and the Owner negotiated and prepared a settlement agreement. The settlement agreement is 65 pages long and Mr. McManus did review the document. A part of the settlement agreement included a portion that went to the Department of Environmental Protection for their review and approval.

Mr. McManus received a letter dated March 11, 2019 from J. Dwight Yoder, counsel for the Appellant/Applicant in each of the applications. The letter was read into the record and Mr. McManus requested a copy of the letter be made a part of Case #6-2017 and Case #7-2017. The letter is addressed to the Manor Township Zoning Hearing Board c/o James McManus regarding zoning permit appeal regarding Frey Farm Landfill expansion validity challenge to Ordinance No. 4-2016. It says, "Dear Jim, On behalf of my clients I am hereby withdrawing all of the applications and appeals pending before the Manor Township Zoning Hearing Board that our office filed regarding LCSWMA's proposal to vertically expand the Frey Farm Landfill. This withdrawal includes the appeal we filed to the Zoning Permit that was issued for the expansion and the challenge we filed to the validity of Ordinance No. 4-2016." The letter goes on to state, "In addition, LCSWMA has raised a claim of a deemed denial relating to these challenges to which our office filed multiple protective appeals with the Lancaster County Court of Common Pleas. Those appeals are also being withdrawn today as part of the overall settlement. Feel free to contact me if you have any questions or would like to discuss this matter." Copies were sent to his clients, William C. Crosswell, counsel to the Manor Township Board of Supervisors and Matthew J. Crème, special counsel to LCSWMA.

Mr. McManus went on to explain that since the letter has been submitted there has been extensive discussion as to what does the Board do and what is the Board authorized to do this evening. Mr. McManus prepared a draft motion that acknowledges the receipt of the letter that was read into the record that withdrew the appeals and applications. It recognizes that there is an issue as to whether the Board has jurisdiction or not. It states that to the extent that the Board has jurisdiction, it dismisses with prejudice appeals docketed to the permit related appeals regarding the vertical expansion of the landfill.

James McManus received an additional letter from Mr. Yoder, dated April 3, 2019. Mr. McManus paraphrased the letter by saying that Mr. Yoder would rather the Board not take action to dismiss anything. He believes that we do not have jurisdiction to that effect. Mr. Yoder cited a case in his letter. Mr. McManus did review that case and he does not believe that it provides guidance that would demand the Board not to assume jurisdiction. He does not feel that the case was on point. Mr. McManus read the letter into the record. The letter referenced the two applications and was addressed to Manor Township Zoning Hearing Board c/o James McManus. The letter states, "I understand that the Manor Township Zoning Hearing Board intends to consider a motion drafted by Attorney Crosswell related to the above captioned matters at its meeting this evening. As I previously expressed in email correspondence and over the phone, it remains my position that the Zoning Hearing Board was divested of jurisdiction upon my client's withdrawal of their appeals and application and accordingly it is inappropriate and ultra vires to the Zoning Hearing Board to take any further action in these matters. See *Pohida v. Zoning Board Kline Twp.*, 429 A 2d 1202. Please enter this into the record of both cases to document my objection to the Zoning Hearing Board proceeding in this matter. I do not plan to attend

this evenings meeting, but please feel free to contact me if you have any questions.” Mr. Taggart will put the letter into the record of both applications.

Mr. McManus stated that the prepared motion has been reviewed by Matt Crème, counsel for LCSWMA, and by Dwight Yoder. Mr. Yoder had at least one week to review the motion. Mr. McManus read the proposed motion. “The Board acknowledges the withdrawal on March 11, 2019 by Appellants through their legal counsel of all applications and appeals pending before the Manor Township Zoning Hearing Board relating to the vertical expansion of the Frey Farm Landfill. A copy of the letter from the Appellants’ counsel dated March 11, 2019, withdrawing these applications and appeals is made a part of the Board’s record in these proceedings. To the extent the Zoning Hearing Board has jurisdiction to do so, the Board dismisses with prejudice the Appeals docketed to Case No. 6-2017 relating to the issuance by the Township of zoning permits for the Frey Farm Landfill Vertical Expansion and the construction of a leachate storage tank on the property located at 3049 River Road, Conestoga, Pennsylvania. Zoning Hearing Board Case No. 7-2017 is dismissed without prejudice to the ability of the Appellants to request that the Township amend or change the Zoning Ordinance in the future and/or to challenge the validity of the Zoning Ordinance, provided that such request or challenge does not relate in any way to the Vertical Expansion of the Frey Farm Landfill or any Vertical Expansion Implementation Activities as defined in the Comprehensive Settlement Agreement and Release of Claims between the Appellants and Lancaster County Solid Waste Management Authority dated November 21, 2018.” Dennis Funk wanted to know if the 65 page settlement agreement has been fully executed. Mr. McManus verified that it has been. Mr. Funk made a motion to approve the motion as read. Missy Charles seconded and the motion carried unanimously. The Zoning Officer will send notice to the counsel of record regarding the action that the Board took this evening. He will also post notice in the Township Building and on the Township website.

The next scheduled meeting will be on May 1, 2019 at 7:00 p.m. Alex Egner announced that he will be resigning from the Board after tonight’s meeting. He will be submitting a written resignation after the meeting. Brad Singer commented that with no further business to discuss, the meeting will close. Missy Charles made a motion to adjourn the meeting. Dennis Funk seconded and the meeting adjourned at 7:37 p.m.

Respectfully Submitted,

Dennis Funk  
Secretary

Recording Secretary  
Michelle Smith

