

HANOVER TOWNSHIP ZONING HEARING BOARD
OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petition of	:	Red Bird Associates LLC
Petition Dated :	:	October 23, 2023
Property	:	Tax Parcels: M6-15-11B
		M6-15-11B-2
		M6-15-11
		M6-15-11C

The Hanover Township Zoning Hearing Board after conducting a hearing on Thursday, January 25, 2024, and after rendering its oral decision dismissing the application for lack of authority to decide the matter at this point in time, hereby makes the following Findings of Fact and Conclusions of Law in support thereof:

1. The petitioner is the owner of property at 100 Gateway Drive being tax parcel M6-15-11B-2 located in a C-2 zoning district. The petitioner is represented by attorney, Thomas J. Schlegel.

2. The petition is a validity challenge to Ordinance No 22-7 approved by the Hanover Township Supervisors on November 8, 2022. This ordinance changed the zoning district from C-2 to PIBD for tax parcels M6-15-11 and M6-15-11C. The petitioner argues that this zoning change was "spot zoning" and should be declared invalid by the zoning board.

3. Following the petition Attorney Michael F. Corriere notified the Zoning Board of his appearance on behalf of the Township. In addition, Attorney Mathew J. Deschler notified the Zoning Board of his appearance on behalf of Arcadia, the entity proposing to develop tax parcels M6-15-11 and M6-15-11C. At the same time, Attorney Deschler filed a motion to dismiss Red Bird Associates' petition arguing it was not "ripe" for review and decision by the zoning board.

4. The matter was duly advertised and posted for a hearing on December 29, 2023. However, the petitioner requested that the hearing be continued until the boards regular hearing date on January 25, 2024. This request was without objection by opposing counsel.

5. Prior to any hearing Attorney Deschler submitted his brief to the Zoning Board in support of the motion to dismiss which was joined in by Attorney Corriere on behalf of the Township. Attorney Schlegel thereafter filed his brief contra to the motion to dismiss with the zoning board.

6. At the hearing on January 25, 2024, it was agreed by counsel that the zoning board needed to decide the motion to dismiss prior to taking testimony on the validity challenge.

7. The board through agreement of counsel confirmed the underlying facts of the motion and briefs: (1) that a land development plan for the two tax parcels affected by the zoning amendment has been filed by Arcadia and is pending before the Hanover Township Supervisors, (2) that the Supervisors have taken no action to approve or deny the plan, (3) that no zoning permits have been issued by the Township Zoning officer and (4) that the plan calls for the development of a warehouse on the parcels which use is listed as a permitted use in the PIBD district but was not listed as a permitted use in the C-2 district

8. Before deliberating on the motion all counsel were also given the opportunity to make any additional arguments on the motion to dismiss.

9. After reviewing both briefs and considering the oral arguments of counsel at the hearing, the board believes the conditions of section 10916.1 (b) of the Municipalities Planning Code, (MPC) which allows the zoning board to consider petitioner's petition and if the board believes it has merit to declare the ordinance invalid, have not been met.

10. Numerous cases as cited in Arcadia's brief have held that a permit or some kind of Township approval is necessary before the ordinance can be challenged. The board believes that the cases cited in petitioner's brief are not directly on point to the factual situation at hand and do not over rule those case more directly on point.

11. The board is mindful that on the one hand generally speaking its job is not to legislate or to second guess the legislative decisions of the Supervisors. On the other hand, when the conditions of this section of the MPC have been met then it is its responsibility to do so in the context of the validity challenge.

12. The board believes however, that in the present case the petitioner has not met the strict conditions of this section as numerous cases have interpreted it and the board further believes it has no authority to expand its role without clear case law providing such authority.

WHEREFORE, the Hanover Township Zoning Hearing Board dismisses the petition without prejudice to file a new petition if and when the Township takes some action approving the development whether conditional, preliminary or final or the Zoning Officer issues a permit or issues a preliminary opinion that the plan is in compliance with the ordinance as amended.

HANOVER TOWNSHIP
ZONING HEARING BOARD

By: _____

Barbara L. Baldo, Esquire,
Chairperson

Dated: 02/16/24

HANOVER TOWNSHIP ZONING HEARING BOARD
OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Application of	:	Howard K. Kuritzky and Michele A Grasso
Application Dated	:	December 23, 2023
Property	:	Lot 13 of Dewire Estates

The Hanover Township Zoning Hearing Board after conducting a hearing on Thursday, January 25, 2024, and after rendering its oral decision granting the requested variance subject to the condition set forth below, hereby makes the following Findings of Fact and Conclusions of Law in support thereof:

1. The subject property is located at 1214 Alyssa Place in an R1-S Residential Suburban District, being Lot No. 13 on a certain subdivision plan of the Dewire Estates dated June 10, 2002.

2. The applicants were represented at the hearing by Attorney Andrew D. Hoffman, who presented Applicants' Exhibits 1 through 13.

3. In 2005, Alice R. Dewire, et al, presented an application to the Zoning Hearing Board dated May 26, 2005. Following a hearing on June 23, 2005, the Zoning Hearing Board issued its written decision dated July 29, 2005. Applicants' Exhibit 3 presented to the Board at the present hearing, consists of a copy of the 2005 decision which is hereafter referred to as the Dewire Decision.

4. During the course of the Dewire hearing, the Dewire Estates Subdivision Plan consisting of 14 lots was made a part of the record, as well as a landscape plan for the Dewire Estates.

5. The Zoning Hearing Board granted the variances requested in the Dewire application subject to the condition that the "average preservation of woodlands per lot when considering all 14 lots shall not be less than 35%".

6. Numerous applications have been made to the Board concerning this subdivision as follows: Lots 10 and 11 (Dewire), Lot 4 (Kresge and Tsihlis), later revised by (Fazil), Lot 14 (Brong), Lot 5 (Hillpot), Lot 9 (Stuter), Lot 3 (Kingston) and Lot 2 (Psitos).

7. In many of those applications, the Zoning Hearing Board granted approval for woodland preservation on that lot of less than 35%.

8. In the present case, the applicants indicated that the trees at the conclusion of building the home and driveway, will be 35% woodland coverage.

9. In the opinion of the Zoning Hearing Board therefore, the proposed development of Lot No. 13 is in compliance with the woodland preservation sections of the ordinance as modified by the Dewire Decision.

10. The applicant also requested relief from the maximum lot coverage provisions of the Zoning Ordinance. Due to the presence of the woodlands, the maximum lot coverage in this subdivision is reduced from the normal 35% to 22%. In the present case, the applicant desires to build structures which will result in 25.2% coverage.

11. The Zoning Hearing Board believes that the grant of a variance with respect to the coverage will result in the home being compatible with the size of other homes in the neighborhood and, therefore, would not be out of character and further subject to the condition set forth below will not be detrimental to the public welfare,

WHEREFORE, the Hanover Township Zoning Hearing Board finds that the proposed application is in compliance with the Dewire Decision as it relates to woodland preservation provisions of the ordinance and hereby grants the variance from the maximum lot coverage provisions of the ordinance to permit the construction of a dwelling and other structures on the premises of up to 25.2% lot coverage subject to the condition that the applicant provide adequate on lot improvements to attenuate the additional storm water run-off due to the increased lot coverage, all as reviewed and approved by the Township Engineer.

HANOVER TOWNSHIP
ZONING HEARING BOARD

By: _____

Barbara L. Baldo, Esquire,
Chairperson

Dated: 02/16/24