

**BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION OF PETER HORGAN**

**NO. 2016-10**

**DECISION**

**I. BACKGROUND**

A public hearing on the above Application was held on November 22, 2016 at the Worcester Township Community Hall, 1031 Valley Forge Road, Fairview Village, Pennsylvania, pursuant to Notice as required by the Worcester Township Zoning Ordinance, as amended (hereinafter “Zoning Ordinance”) and the Pennsylvania Municipalities Planning Code. The Applicant/Equitable Owner, Peter Horgan, proposes to create a flag lot by subdivision at 2131 Bethel Road, Worcester Township, in the AGR – Agricultural Zoning District.

The Applicant requested the following relief:

A variance from Section 150-12.B(2) of the Zoning Ordinance, so as to permit Lot #2 of the proposed subdivision to have a 25' lot width at the street line, rather than the 250' required.

A quorum of the Zoning Hearing Board participated in the public hearings and conducted a vote in accordance with law. The Applicant was represented by Edward Wild, Esquire. The following neighboring property owners elected to enter appearance as parties: Mark Constable, Paul Heck, and Mary Grace Sparango as agent pursuant to a Power of Attorney for Pat Sparango. The witnesses were duly sworn or affirmed and Notes of Testimony for the hearings were transcribed and are hereby made a part of this record.

The matter was continued to the December 27, 2016 meeting of the Board, at which time the Board permitted the Applicant to reopen the record and entertained additional evidence and testimony from all parties. The Board engaged in public discussion and voted to grant the

application, but subject to various conditions and limitations. The Board issues Findings of Fact and Conclusions of Law in support of the Decision and Order.

## II. FINDINGS OF FACT

1. The Applicant is Peter Horgan, the equitable owner of the property in question located at 2131 Bethel Road, Parcel No. 67-00-00430-00-7, Worcester Township, Montgomery County, Pennsylvania. (N.T. 11/22/16, pp. 49-50; Exhibits A-2, A-3 and A-6)

2. The following Exhibits were marked and duly admitted into evidence:

Board Exhibits:

B-1	Public Notices
B-2	Proofs of Publication
B-3	ZHB Solicitor Correspondence 12/12/16

Applicant's Exhibits:

A-1 (A-E)	Photographs
A-2	Tax Map
A-3	Application and Narrative
A-4	Prior Decision No. 06-04
A-5	Deed
A-6	Agreement of Sale
A-7	Plan
A-8	Proposed Covenant
A-9	2006 Plan

Objector Exhibits:

Heck-1	Tax Map
Heck-2	Trend Report p. 1
Heck-3	Trend Report p. 2
Heck-4	Trend Report p. 3

3. The property is located in the AGR-Agricultural District. (N.T. 11/22/16, p. 9 Exhibits A-3 and A-7)

4. The Applicant presented the expert testimony of a civil engineer, John Anderson. (N.T. 11/22/16, pp. 7-8)

5. The Applicant proposes to subdivide the existing 7.67 acre lot, resulting in the existing lot on Bethel Road to now measure 3 acres, and create a flag lot measuring 4.67 acres accessing Bethel Road by a 25' access strip. (N.T. 11/22/16, pp. 15-17; Exhibits A-3 and A-7)

6. In Application No. 06-04, this Board granted variances for this lot to be subdivided into three (3) lots, with a 50' access strip off of Bethel Road, which access would have been shared with an adjoining lot. (N.T. 11/22/16, pp. 10-12; Exhibits A-4 and A-9)

7. The approvals granted by this Board in Decision No. 06-04 have expired and are being abandoned by this application. (N.T. 11/22/16, p. 12)

8. The existing house on the property is in a severely dilapidated condition and will be demolished. (N.T. 11/22/16, pp. 13-15, 24, 53-54; Exhibits A-1A through A-1E)

9. The proposal complies with the requirements of Section 150-179 of the Zoning Ordinance, requiring flag lots to meet the minimum lot area in the AGR District (80,000 square feet excluding the access strip) and the narrow portion of the flag lot will maintain a minimum width of 25' along its entire length.

10. The single family residence on each of the two (2) proposed lots would share a driveway and access onto Bethel Road. (N.T. 11/22/16, pp. 16-17)

11. The lot is long and narrow, measuring approximately 300 feet wide and approximately 1,160 feet long. (N.T. 11/22/16, pp. 17-18; Exhibit A-7)

12. In Section 150-9 of the Worcester Township Zoning Ordinance, lot width is defined as the frontage dimension measured at the building line.

13. Flag lots with 25 foot access strips are permitted in Worcester Township under Section 150-179; however, because of the provisions of Section 150-12.B(2) requiring a minimum 250 foot lot width at the building line and at the street line, flag lots are not permitted in the AGR

District if the flag lot would access onto a secondary collector or primary street.

14. One of the goals of Section 150-12.B(2) is to limit the number of accesses onto the busier streets in the Township.

15. In this case, because of the shared driveway and common access, this goal of Section 150-12.B(2) will be achieved.

16. This is not a case where an applicant seeks to build a house on an already existing flag lot; the Applicant proposes to create a flag lot, and therefore, the Applicant must meet the criteria for a variance.

17. However, what is unique about this case is that this Board (albeit comprised of different members) found it appropriate to grant a variance in 2006 from this identical section of the Zoning Ordinance to permit this property to be subdivided into three (3) lots.

18. At the hearing on December 27, 2016, the Applicant presented additional information regarding the relief granted by this Board in 2006. (N.T. 12/27/16, pp. 67-73; Exhibit A-9)

19. The relief at Zoning Hearing Board No. 06-04 has expired; nevertheless, because this Board has previously granted relief related to this lot, and therefore made a determination that granting a variance was appropriate, proper and consistent with law in that application, the Board finds it instructive and helpful in analyzing and considering that prior decision in determining whether it would be error to now find that the standards for granting a variance in this present application have not been met.

20. The newly created lot will measure over twice the minimum 80,000 square foot lot size in the AGR District, and will meet all other requirements of the Ordinance, including all setbacks. (N.T. 11/22/16, pp. 15-17)

21. Neighboring property owners expressed concerns for the woodland areas, access, and storm water related issues in the area. (N.T. 11/22/16, pp. 26-30, 37-39; N.T. 12/27/16, pp. 80-94)

22. There was testimony from an objector indicating that nearby lots are approximately the same size as the lot in question, but the Board notes that the adjacent parcel contains a flag lot, and other flag lots, and numerous cul-de-sacs serving smaller lots, exist in the immediate vicinity. (N.T. 11/22/16, pp. 51-52; Exhibit A-2)

23. In addition, a review of the tax map exhibit presented by the objector demonstrates that this lot is quite unique in size and lot shape, as there are only two (2) other lots shown on the tax map fronting on Bethel Road, not impacted by the turnpike, of a similar configuration, but with somewhat less square footage than the lot in question. (Exhibit Heck-1)

24. The Applicant will attempt to preserve the wooded areas on the lots. (N.T. 11/22/16, pp. 28-29)

25. The Applicant will comply with, or exceed compliance with, all applicable state and township storm water controls, and the Board has imposed a condition requiring a higher level of compliance. (N.T. 11/22/16, p. 29)

26. The Board also took notice of the township engineer's testimony from the 2006 hearing that the property could be subdivided into the additional lots, if a road were to be constructed on the property. (N.T. 12/27/16, pp. 78-80, 91-92, 94-95)

27. The Applicant also offered to voluntarily impose upon the property a deed restriction/covenant against further subdivision of the property. (N.T. 12/27/16, pp. 67-68, 75-77, Exhibit A-8)

28. The relief granted herein is significantly less than that which was granted in 2006

by this Board, and such relief is justified under the circumstances.

29. With reference to the variance requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester Township Zoning Ordinance, and because of the unique circumstances present, the Board determines the following:

- A. There are unique physical circumstances or conditions, including narrowness or shallowness of lot size or shape, and other physical conditions peculiar to the particular property, resulting in an unnecessary hardship which 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.
- B. Because of such physical circumstances or conditions, there is no possibility that the property can be subdivided and used in strict conformity with the provisions of the Zoning Ordinance, and the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- C. The hardship has not been created by the Applicant.
- D. The granting of the variance will not frustrate the intent of the ordinance, or adversely impact the development of adjoining properties, or alter the essential character of the neighborhood;
- E. The variance requested is the minimum variance to afford relief under the circumstances.

30. Under Section 150-217 of the Zoning Ordinance, the Board determines that granting the requested variance will not be contrary to the public interest, due to special conditions a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship, the spirit of the Ordinance will be observed, and substantial justice will be done.

31. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action:

- (A) The property is suitable for the use desired and the variance is consistent with the spirit, purpose and intent of the Zoning Ordinance.

(B) The relief will not substantially injure or detract from the use of neighborhood property or from the character of the neighborhood, and the use of the adjacent property is adequately safeguarded.

(C) The proposal will serve the best interest of the Township, the convenience of the community and the public welfare.

(D) There will be no adverse impact upon the logical efficient and economical extension of public services and facilities such as public water, sewer, police and fire protection and public schools.

(E) In complying with the further development requirements, the Township will require that any sewage or waste resulting from the proposed use will be satisfactorily disposed of, and if such sewage is to be disposed of on an on-lot basis, that the size of the lot and nature of the soil are such as will ensure satisfactory sanitary subsurface disposal.

(F) The effect of the proposed change or improvement will not create any runoff water or drainage problem that might be injurious to adjacent or nearby properties or create an expense for the Township.

(G) The Township will ensure that the proposal represents sound standards of subdivision practice.

(H) There are special circumstances or conditions fully described in the Findings of Fact applying to the land for which the variance is sought, which justify the conclusion that the application of the provisions of this chapter would deprive the Applicant of the reasonable use and development of such land.

(I) The unique circumstances for which the variance is sought were neither created by the owner of the property nor are such circumstances due to or the result of general conditions in the district in which the property is located.

32. The provisions of the Zoning Ordinance, strictly applied, impose an unnecessary hardship on the Applicant and, therefore, the requested variance should be granted.

### **III. DISCUSSION**

Although this Board's Decision at Application No. 06-04 has expired, the Board cannot ignore the fact that this Board previously determined that a hardship existed with respect to this lot, justifying relief from this provision of the Zoning Ordinance. Because this Board has previously granted relief related to this lot, and therefore made a determination that granting a variance was appropriate, proper and consistent with law in that application, the Board finds it instructive and helpful in analyzing and considering that prior decision in determining whether it would be error to now find that the standards for granting a variance in this present application have not been met. This is especially important where the relief requested in this Application is to subdivide the lot into two (2) lots, which would be less than previously granted in Application No. 06-04 (subdividing the lot into three (3) lots). The Board also has the right to place certain conditions on the granting of any relief.

The Zoning Hearing Board is very reluctant to grant variances in situations where an applicant's request appears to be based primarily on monetary benefit. Consequently, based on this record, the Board determines that further subdivision of this parcel, beyond that which was requested, would result in an overdevelopment of the lot solely for economic/financial gain. Hence the Board has imposed the condition prohibiting further subdivision, as proposed by the Applicant.

Considering that relief for this lot has been granted in the past, the fact that the property

measures over 7.5 acres, with only 300 feet of frontage, the newly created lot will measure twice the size of a conforming lot, and the Applicant has consented to various conditions and limitations with respect to the application, the relief to permit subdivision into two (2) lots is appropriate in these circumstances.

In addition, a review of the tax map demonstrates that there are only two (2) other long and narrow lots of similar size in the immediate vicinity not impacted by the turnpike. This proposal virtually mirrors the flag lot configuration on the immediately adjacent parcel. There are other flag lots and numerous cul-de-sacs serving smaller lots in the area.

Finally, the Board has also taken into consideration the additional factor regarding the dilapidated condition of the property, which, has now existed for ten (10) years since the last approval by this Board. It is therefore appropriate to now conclude that the property is likely to remain in such dilapidated condition, absent zoning relief from this Board, which will make reasonable development and re-use of the property financially feasible. There is no doubt that the rehabilitation of the property would be in the best interests of the neighborhood and the Township.

#### **IV. CONCLUSIONS OF LAW**

1. The Zoning Hearing Board has jurisdiction over the subject matter of the application.
2. The Applicant is the equitable owner of the property in question.
3. The Applicant and the subject matter are properly before the Board, and the Applicant has standing to submit the application.
4. Hearing notices were duly published and posted in accordance with law, by advertisement in the newspaper and posting on the property.
5. With reference to the variance requested, upon consideration of Section 910.2 of

the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester Township Zoning Ordinance, and because of the unique circumstances present, the Board determines the following as a matter of law:

- A. There are unique physical circumstances or conditions, including narrowness or shallowness of lot size or shape, and other physical conditions peculiar to the particular property, resulting in an unnecessary hardship which 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.
- B. Because of such physical circumstances or conditions, there is no possibility that the property can be subdivided and used in strict conformity with the provisions of the Zoning Ordinance, and the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- C. The hardship has not been created by the Applicant.
- D. The granting of the variance will not frustrate the intent of the ordinance, or adversely impact the development of adjoining properties, or alter the essential character of the neighborhood;
- E. The variance requested is the minimum variance to afford relief under the circumstances.

6. Under Section 150-217 of the Zoning Ordinance, the Board determines that granting the requested variance will not be contrary to the public interest, due to special conditions a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship, the spirit of the Ordinance will be observed, and substantial justice will be done.

7. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action:

- (A) The property is suitable for the use desired and the variance is consistent with the spirit, purpose and intent of the Zoning Ordinance.

(B) The relief will not substantially injure or detract from the use of neighborhood property or from the character of the neighborhood, and the use of the adjacent property is adequately safeguarded.

(C) The proposal will serve the best interest of the Township, the convenience of the community and the public welfare.

(D) There will be no adverse impact upon the logical efficient and economical extension of public services and facilities such as public water, sewer, police and fire protection and public schools.

(E) In complying with the further development requirements, the Township will require that any sewage or waste resulting from the proposed use will be satisfactorily disposed of, and if such sewage is to be disposed of on an on-lot basis, that the size of the lot and nature of the soil are such as will ensure satisfactory sanitary subsurface disposal.

(F) The effect of the proposed change or improvement will not create any runoff water or drainage problem that might be injurious to adjacent or nearby properties or create an expense for the Township.

(G) The Township will ensure that the proposal represents sound standards of subdivision practice.

(H) There are special circumstances or conditions fully described in the Findings of Fact applying to the land for which the variance is sought, which justify the conclusion that the application of the provisions of this chapter would deprive the Applicant of the reasonable use and development of such land.

(I) The unique circumstances for which the variance is sought were neither created by the owner of the property nor are such circumstances due to or the result of general conditions in the district in which the property is located.

8. The provisions of the Zoning Ordinance, strictly applied, impose an unnecessary hardship on the Applicant and, therefore, the requested variance should be granted.

#### **V. OPINION**

Upon consideration of the evidence and testimony presented regarding the Application, the Zoning Hearing Board of Worcester Township determines that a variance from Section 150-12.B(2) of the Zoning Ordinance, so as to permit Lot #2 of the proposed subdivision to have a 25 foot lot width at the street line, rather than the 250 feet required, should be granted. The Board therefore enters the following Order.

**BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION OF PETER HORGAN**

**NO. 2016-10**

**ORDER**

A variance from Section 150-12.B(2) of the Zoning Ordinance, so as to permit Lot #2 of the proposed subdivision to have a 25' lot width at the street line, rather than the 250' required, is GRANTED.

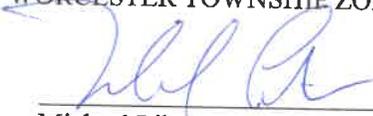
**CONDITIONS**

This Decision is subject to the following conditions:

1. The Board's Decision at Application #06-04 is abandoned.
2. The Applicant shall apply for and obtain subdivision approval from the Board of Supervisors substantially as shown on the plan marked as Exhibit A-7.
3. All use and development permitted by this Decision shall conform to the exhibits and testimony presented by the Applicant, unless inconsistent with any specific conditions imposed by this Board, in which case these specific conditions shall take precedence.
4. The Applicant shall apply for and obtain all applicable Township, County and State permits and approvals relative to the subdivision in a timely manner.
5. Prior to final subdivision approval, the owners of the property shall record a Deed Restriction/Covenant, substantially in accordance with Exhibit A-8, but also in such form acceptable to the Township Solicitor, restricting the property from any further subdivision.

6. The properties shall be served by a common driveway to be located as directed by the Township, and in accordance with all PennDOT requirements.
7. The Applicant shall comply with all requirements of the Township Engineer with respect to storm water controls, which shall be designed for a 200-year level of flood protection.
8. Except as permitted by prior Decisions of this Board (other than #06-04 which has been abandoned), the use of the subject property shall otherwise comply with the Worcester Township Code, including, but not limited to, all storm water management, fencing, setback, parking, lighting, sign and noise regulations, and all other codes, regulations and ordinances of Worcester Township.

WORCESTER TOWNSHIP ZONING HEARING BOARD

  
\_\_\_\_\_  
Michael Libor, Chair

(Not present at the first meeting)  
\_\_\_\_\_  
Caesar Gambone, Vice Chair

  
\_\_\_\_\_  
John D'Lauro, Secretary

  
\_\_\_\_\_  
Bradford Smith

Order Entered: \_\_\_\_\_

Circulation Date: \_\_\_\_\_

Pursuant to Section 150-225 of the Worcester Township Zoning Ordinance, a special exception or variance shall expire if the Applicant fails to obtain a permit in connection therewith within one (1) year of the date of authorization thereof. When land development/subdivision approval is required, the special exception or variance shall expire if the Applicant fails to make a diligent effort to obtain such approval within six (6) months following the date of the Zoning Hearing Board's Order. Upon receipt of land development/subdivision approval, the special exception or variance shall expire if a building permit is not obtained within six (6) months of the date of the land development/subdivision approval.

This Decision and Order of the Board is final and any appeal of it must be filed with the Court of Common Pleas of Montgomery County within thirty (30) days following the Circulation Date set forth above. The Board reserves the right to supplement the Findings of Fact and Conclusions of Law in support of this Decision if an appeal is filed.