

WEST MANHEIM TOWNSHIP ZONING HEARING BOARD  
YORK COUNTY, PENNSYLVANIA  
PUBLIC HEARING

IN RE:

DAN RYAN BUILDERS MID-ATLANTIC, LLC : WEST MANHEIM TOWNSHIP  
: Zoning Hearing Board

ORDER

~~AND NOW, this 2 day of February, 2021, it is ORDERED that the Applicant's request for a variance is DENIED.~~

On the motion to deny the request, Board members Jeffrey Garvick, Michael Harkins and Ronald Wentz all voting "AYE."

Respectfully submitted,

RECEIVED  
FEB 08 2021 *MMS*  
WEST MANHEIM TOWNSHIP

*Joseph A. Kalasnik*

Joseph A/ Kalasnik, Esquire  
Supreme Court ID 76063  
1157 Eichelberger Street – Suite 4  
Hanover, PA 17331  
(717) 630-0909 – Telephone  
(717) 632-8020 – Facsimile  
[jkalasnik@kalasniklaw.com](mailto:jkalasnik@kalasniklaw.com)  
Solicitor, West Manheim Township ZHB

**WEST MANHEIM TOWNSHIP ZONING HEARING BOARD  
YORK COUNTY, PENNSYLVANIA  
PUBLIC HEARING**

**IN RE:**

**DAN RYAN BUILDERS MID-ATLANTIC, LLC : WEST MANHEIM TOWNSHIP  
: Zoning Hearing Board**

**Before:**

**Jeffrey Garvick, Chairman**

**Ronald Wentz**

**Michael Hawkins**

**~~Joseph A. Kalasnik, Esquire, Solicitor~~**

---

**Date of Hearing: Tuesday, December 22, 2020, 7:00 pm**

**Place: West Manheim Township Municipal Building**

**2412 Baltimore Pike**

**Hanover, PA 17331**

**WRITTEN DECISION OF THE ZONING HEARING BOARD**

This is the written decision of the West Manheim Township Zoning Hearing Board (hereinafter "the Board") regarding the application of Dan Ryan Builders Mid-Atlantic, LLC, 10212 Governor Lane Blvd., Williamsport, MD 21795 (hereinafter "the Applicant"). The Applicant filed an application for a Zoning Board Hearing on or about November 12, 2020. That application requested a variance to Section 270-72 of the West Manheim Township Zoning Ordinance (hereinafter "the Ordinance").

## FINDINGS OF FACT

1. The Applicant seeks a variance from Article 12 Conservation Overlay District Section 270-72 dimensional standards. Specifically, the Applicant seeks a variance to the 40-foot front setback requirement to allow a reduction of the required 40-foot front setback to a 25-foot front setback.
2. The subject property is the Prinland Heights subdivision, 199 Pheasant Ridge Road, West Manheim Township, Pennsylvania.
3. The Applicant is a commercial enterprise that constructs residential homes for sale to willing buyers.

---

4. The Applicant's proposed subdivision comprises approximately 52 acres of which approximately 28 acres would remain open space.
5. The Applicant's proposed subdivision would have approximately 99 single-family residential building lots upon completion.
6. The planned residential building lots' area would each average approximately 10,000 ft.<sup>2</sup>.
7. The setback variance, if granted, would be uniformly applied to the entire subdivision.
8. West Manheim Township Board of Supervisors previously approved the subdivision development plan without the reduction in the 40-foot setback.
9. The minimum lot requirement under the Ordinance for the subdivision is 7500 ft.<sup>2</sup>.

10. The planned residential lot size for the subdivision was determined by using the minimum lot area necessary to produce the highest number of buildable lots.

11. The Applicant's objective was to build the greatest number of houses on the smallest lot size while still complying with the Conservation Overlay District requirements.

### **STANDARD OF REVIEW**

An application for a variance from the requirements of the Zoning Ordinance must be reviewed under the provisions and standards at § 270-232 of the Ordinance and 53 P.S. Section 910.2 of the Municipalities Planning Code which state as follows:

---

#### **Variances.**

A. General. The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship upon the applicant. The Board may, by rule, prescribe the form of application.

B. Standards for variance. The Zoning Hearing Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this chapter in the neighborhood or district in which the property is located.

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(4) That the variance, if authorized, 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.

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

---

### OPINION AND CONCLUSIONS OF LAW

In the Applicant's Memorandum of Law in Support of Variance Application which was submitted with the application for a variance, the Applicant argues that for a "dimensional" variance of the sort requested by Applicant, the law permits application of a relaxed standard and consideration of factors in addition to those which are required with respect to issuance of a "use" variance. The Applicant points out that the Supreme Court of Pennsylvania has articulated the distinction between "use" and "dimensional" variances as critical in determining the standard for issuance of a variance. Specifically, the Applicant cites *Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh*, 554 Pa. 249, 721 A.2d 2d 43 (1998) in which the Court opined as follows:

The issue here involves a dimensional variance and not a use variance -- an important distinction... When seeking a dimensional variance with any permitted use, the owner is asking only for a reasonable adjustment of the zoning

regulations in order to utilize the property in a manner consistent with the applicable regulations. Thus, a grant of a dimensional variance is of lesser moment than a grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulations.

554 Pa. at 257, 721 A.2d at 47.

Thus, the Applicant's variance request hinges on whether the request is a *reasonable adjustment* of the Ordinance and the standards which must ordinarily be met to grant a variance.

Two critical factors bear on the Board's consideration of the variance request and the Board's decision.

---

First, the Applicant is requesting that a variance be granted to the entire proposed subdivision consisting of approximately 99 residential lots prior to any construction, let alone completion, of the lots. It is not uncommon for the Board to consider and occasionally grant discrete dimensional variance requests for existing and developed residential lots when unique circumstances and unnecessary hardships (as defined by the Zoning Ordinance and Municipalities Planning Code) affect the practical use of a residential lot. It is highly unusual, however, for the Board to consider granting a single dimensional variance that will apply to an entire residential subdivision prior to its construction. On its face, granting such a variance would seem to render moot the standards for the zoning district in which the subdivision is proposed to be built. It seems pointless and unreasonable to develop detailed and comprehensive standards for a zoning district which the Board is bound to apply if those standards can be readily superseded on such a large scale as proposed by the Applicant. The Board is, therefore, unwilling to essentially waive the requirements of the Ordinance on such a large scale.

Second, the Applicant has testified that the residential lot size for the subdivision was determined by using the minimum lot area necessary to produce the highest number of buildable lots.

Presumably, the Applicant believes that this would increase the value of the subdivision by enhancing the marketability of each lot. Even assuming that this belief is accurate, it is not within the purview of the Board to consider financial marketability of the property when rendering its decision unless it can be established that without the requested relief the property would be rendered valueless. In the instant case, it is clear that the property would be far from valueless without the requested variance. There was also no evidence presented that without the variance the value of the property would be unreasonably diminished.

---

Furthermore, the Applicant has essentially created his own unnecessary hardship by choosing a lot size such that the Applicant deems a variance necessary to achieve the desired use of the property. There was no evidence presented to indicate that larger lot sizes that would not require a variance would not be feasible.

Although the Board recognizes that strict application of all of the standards for a variance as outlined above may not be necessary when a dimensional variance is requested, any such variance must still meet the test of reasonableness for the regulatory adjustment that is sought. Therefore, having reviewed the standards for a variance and based on the testimony and evidence presented, the Board is unpersuaded that granting the requested variance constitutes a reasonable adjustment of the Ordinance so that the property may be used in a manner consistent with the applicable standards for the zoning district.

## CONCLUSION

For the reasons stated above, the Applicant's Application for Variance is DENIED in that the request fails to meet the standards for a variance under the West Manheim Townships Zoning Board and Municipalities Planning Code, and otherwise fails to meet the legal threshold required to consider the variance a reasonable adjustment of applicable zoning regulations.

---