

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

IN RE:
ABIGAIL FRENKIL,
Applicant

**WEST MANHEIM TOWNSHIP
Zoning Hearing Board
VA#01-03-19-2021**

APPLICATION FOR VARIANCE

Before:
Jeffrey Garvick, Chairman
Michael Hawkins
Holly Zumbrum
David Appleby
Joseph A. Kalasnik, Esquire, Solicitor

Date of Hearing: Tuesday, April 27, 2021, 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 Abigail Frenkil, 2772 Black Rock Road, Hanover, PA 17331. The Applicant filed an application for a Zoning Board Hearing on or about March 19, 2020. That application requested three variances from the West Manheim Township Zoning Ordinance at Section 270-147: (A) Minimum lot area shall be two acres; (B) Any structure used for boarding horses or dogs shall be set back at least 100 feet from any property line; and (D) Animal pens and or fencing from the containment of animals shall be set back at least 25 feet from any property line and street right-of-way.

FINDINGS OF FACT

1. Applicant’s property is bounded on three sides by three property owners who are in active possession of their respective properties;

2. The three adjacent property owners include one using the property for residential purposes and the other two property owners using their properties for commercial purposes;

3. The Applicant's proposed canine kennel facility would be to the rear of the existing house on the Applicant's property;

4. More than 50% of the Applicant's back yard will be enclosed by a vinyl privacy fence;

5. The canines housed at the kennel will be subject to animal stimulation to include various outdoor exercises so that the canines avoid participating in destructive behaviors which might occur absent such stimulation;

6. The canines will spend time outside of the kennel and inside according to an undetermined schedule;

7. The canines will have individualized exercise and playtime;

8. The proposed use would include a canine kennel in the basement of the Applicant's home by remodeling the basement; no additional buildings would be constructed;

9. The individualized canine exercise would be performed primarily near the perimeter of the backyard;

10. Outdoor kennels sufficient in number to house the canines would be constructed to permit appropriate cleaning and maintenance of the indoor kennels;

11. Property buffers on the outside where the canines will be housed or exercised consists of some trees and shrubs; the area where the canines will be housed and exercised will not have natural buffers along the entire length of the boundaries;

12. The area proposed to be used for canine kennels is less than 25% of the area required by the zoning ordinance;

13. The duration of the canines' stay at the kennel may be daycare only or extended care for multiple days and nights depending on the needs of the canines' owners;

14. The outdoor privacy fence and closing the area around the canines' exercise area would be a maximum of 6 feet high;

15. Any structure required for the proposed use would be less than 100 feet from the Applicant's property line;

16. The canine kennels and fencing for the proposed use will be less than 25 feet from the Applicant's property line and public street right of way as required by the zoning ordinance;

ZONING BOARD OPINION AND CONCLUSIONS OF LAW

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:

Variations.

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

Applicant requests three variances to Section 270-147 (Kennels) so that she may operate a facility for boarding canines on her property. Specifically, she asks that she be allowed to operate this proposed use on significantly less than the minimum two acres required by the ordinance, that any structures used for boarding of canines' be set back less than 100 feet from any property line, and that animal pens and/or fencing for containment of the canines be set back less than 25 feet from any property line and the street right-of-way. Thus, Applicant requests relief by variances regarding the proposed lot size, extent of setback of structure(s), and extent of setback for fencing.

The burden of proof for establishing that the Applicant has met the legal requirements for a variance described above lies entirely with the Applicant. In this case, the Applicant provided little or no testimony or other evidence demonstrating that the threshold issue of unnecessary hardship which is not self-created exists. Having failed to satisfactorily address this crucial threshold issue, the Zoning Board would be justified in denying the Applicant's requests based on

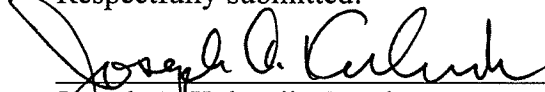
this issue alone. However, the Zoning Board also reviewed the other requirements for a variance as they relate to each of Applicant's requests and found that little or no evidence was provided to merit granting of the requests even if the Applicant had proven the threshold issue of unnecessary hardship.

Based on the testimony and evidence presented both by the Applicant and an interested party, it is clear to the Zoning Board that the Applicant has not met the legal burden of proof for her requests..

CONCLUSION

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

Respectfully submitted:



Joseph A. Kalasnik, Esquire

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ORDER

AND NOW, this 7th day of June, 2021, it is **ORDERED** that the Application presented by the Applicant requesting three variances is denied as to all three variances.

Board members Jeffrey Garvick, David Appleby, Holly Zumbrum, and Michael Harkins all voting "AYE."

Respectfully submitted:

6/7/2021
Date of Mailing



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CERTIFICATE OF SERVICE

This 7TH day of June 2021, I, Joseph A. Kalasnik, solicitor for the West Manheim Township Zoning Hearing Board, do hereby certify that on June 7, 2021 a true and correct copy of the Written Decision of the Zoning Hearing Board in the Application of Abigail Frenkil was served as follows:

Abigail Frenkil
2772 Black Rock Road
Hanover, PA 17331
1st Class Mail

Michael Hawkins-Board Member
meh87@comcast.net

Mike Bowersox-Zoning Officer
mbowersox@westmanheimtwp.com

Jeff Garvick-Board Chairperson
jgarvick1@comcast.net


Miriam Clapper-Township Secretary
mclapper@westmanheimtwp.com

Ron Wentz-Board Member
wentz99@embarqmail.com

David Appleby-Board Member
Dappleby07@gmail.com

Holly Zumbrum-Board Member
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