

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

**IN RE:  
MATT POWELL,  
DBA DR ACQUISITIONS LLC  
Applicant**

**WEST MANHEIM TOWNSHIP  
Zoning Hearing Board  
VA#02-03-31-2021**

**APPEAL**

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 Zoning Board") regarding the application of Matt Powell, DBA DR Acquisitions LLC, 7945 Wormans Mill Road, Frederick, MD 21701 (hereinafter "Applicant"). The Applicant filed an application for a Zoning Board hearing on or about March 31, 2020. That application requested a single variance from the West Manheim Township Zoning Ordinance at Section 270-72: Dimensional Standards - 20-foot rear setback. Applicant seeks to apply this variance to each of 99 single family residential building lots in an approved residential development to be called "Prinland Heights" at 199 Pheasant Ridge Road, within West Manheim Township (Parcel# 52-000-BE-0077.00.0000). In short, the Applicant seeks a ten-foot rear setback for each lot instead of a twenty-foot setback.

## FINDINGS OF FACT

1. When the Applicant purchased the subject property (hereinafter “the Property”) the land development plan had previously been approved by the West Manheim Township supervisors;
2. A full design modification to conform to the approved development plan would cause the Applicant to incur substantial additional expense;
3. The Applicant prefers marketing homes that are deeper and narrower in size than what is required based on the approved land development plan;
4. Without the requested variance a smaller residential structure would be required which, in turn, would reduce the sale price of the home;
5. The Applicant seeks to “maximize the price points” for the building lots in the residential housing development;
6. The Zoning Board considered a similar application and variance request from another applicant for the Property within several months prior to the instant application; that similar application was denied;
7. The Applicant seeks to enhance the marketability of residences on the Property by maximizing the number of lots where an available house type may be built;
8. The Applicant seeks to maximize both the flexibility of his housing product and the options available on residences in the development;
9. It is feasible to construct and sell houses which conform to the approved land development plan albeit at a lower price point than the one preferred by the Applicant;
10. The Applicant entered into an agreement with another party to develop the Property for residential use with either actual or constructive knowledge that the pre-existing approved land development plan would prevent the Applicant from constructing residences in the manner proposed within his application.

## 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 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.

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.

#### OPINION AND CONCLUSIONS

The Applicant testified at length regarding his desire to maximize the marketability and price points of building lots and residences in the planned development of the Property. However, the Applicant also acknowledged that the Property could be developed without the requested variance and within the parameters of the zoning ordinance albeit with residences at lower selling prices than the Applicant desires. However, enhancing marketability and profit are not grounds for granting a variance as they are not included in the standards for a variance described above. Furthermore, it is clearly possible and feasible (financially and otherwise) to develop the Property in strict conformity with the provisions of the zoning ordinance. As such, the Applicant's argument based on these factors is summarily rejected.

The Applicant claimed that he has participated in legal proceedings in which similar requests for variances have been granted for an entire residential development and, as such, the Zoning Board should consider granting the variance requested in his application. However, the Applicant provided no legal citations or other legal authority to support his contention that the Zoning Board should be bound or persuaded by any prior decisions of any legal entity such as a zoning board, court or other legal agency. As such, the Zoning Board is bound to adhere to the

standards for a variance under the Township zoning ordinance and the Pennsylvania Municipalities Planning Code which, as stated above, require denial of Applicant's variance request.

The Applicant sought to persuade the Zoning Board that granting the variance would increase the tax base and tax revenue to the Township and, as such, the requested variance should be granted because of this anticipated financial benefit to the Township. Setting aside that the Zoning Board is not officially involved in any manner with municipal taxation, the issue of whether granting a variance will increase the municipal tax base and tax revenue is not included in the standards the Zoning Board must consider. In fact, it would be improper for the Board to consider the impact on tax revenue when deciding whether to grant a variance. As such, this argument must also be summarily rejected as irrelevant to the Zoning Board's decision.

At the conclusion of his testimony the Applicant did cursorily review each of the legal standards for a variance as listed above to argue that he has met the standards which allow for a variance to be granted. However, after conducting its own analysis of the legal standards as they apply to the Applicant's variance request, the Zoning Board finds the Applicant's argument that his application meets the legal standards unpersuasive. Most importantly, the Applicant has not proven an unnecessary hardship given that he accepted the building project knowing that the pre-existing land development plan and zoning ordinance precluded construction of the type and size of residence he prefers. It is clear to the Zoning Board that the primary, if not exclusive, basis for the requested variance is ultimately enhanced financial profitability in the sale of residential units. The Applicant has the legal burden of proof that he has met the requirements for a variance. His review of the standards was unpersuasive to the Zoning Board especially in light of his prior testimony emphasizing his desire to enhance marketability of the Property with the requested variance. For the reasons explained above, this is not a proper consideration for the Zoning Board.

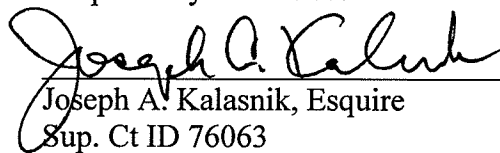
Finally, although the Applicant is not the identical applicant of a recent zoning hearing application heard by the Zoning Board in which the request for a variance at the same property

was substantially similar, the Applicant may be barred from litigating the variance request based on the legal doctrine of collateral estoppel, also commonly known as issue preclusion. This doctrine states that a prior judgment between the same parties on a different cause of action is an estoppel as to those matters in issue or points controverted, on determination of which a finding or verdict was rendered. Although the applicants of the prior and instant application are not exactly the same persons or entities, it appears that the instant applicant may have simply assumed the role of the prior applicant for purposes of this litigation, which may bear on the issue of identity of parties. However, because the Applicant has clearly failed to meet the legal burden of proof for granting a variance as explained above, the Zoning Board need not further opine or rely on the issue of collateral estoppel to render a decision in this case.

### **CONCLUSION**

For the reasons stated above, the Applicant's Application for Variance is DENIED because the request fails to meet the standards for a variance under the West Manheim Township 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.

Respectfully submitted:

  
Joseph A. Kalasnik, Esquire

Sup. Ct ID 76063

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Solicitor, West Manheim Township ZHB

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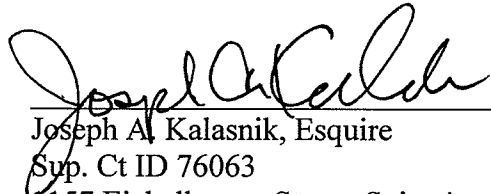
**ORDER**

AND NOW, this 9<sup>th</sup> day of June 2021, it is **ORDERED** that the Application presented by the Applicant requesting a variance is denied.

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

Respectfully submitted:

6/9/21  
Date of Mailing

  
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**CERTIFICATE OF SERVICE**

This 9<sup>th</sup> day of June 2021, I, Joseph A. Kalasnik, solicitor for the West Manheim Township Zoning Hearing Board, do hereby certify that on June 9, 2021 a true and correct copy of the Written Decision of the Zoning Hearing Board in the Application of Matt Powell was served as follows:

Matt Powell  
7945 Wormans Mill Road  
Frederick MD 21701  
[mpowell@drbgroup.com](mailto:mpowell@drbgroup.com)

Michael Hawkins-Board Member  
[meh87@comcast.net](mailto:meh87@comcast.net)

Mike Bowersox-Zoning Officer  
[mbowersox@westmanheimtwp.com](mailto:mbowersox@westmanheimtwp.com)

Jeff Garvick-Board Chairperson  
[jgarvick1@comcast.net](mailto:jgarvick1@comcast.net)


Miriam Clapper-Township Secretary  
[mclapper@westmanheimtwp.com](mailto:mclapper@westmanheimtwp.com)

Ron Wentz-Board Member  
[wentz99@embarqmail.com](mailto:wentz99@embarqmail.com)

David Appleby-Board Member  
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Holly Zumbrum-Board Member  
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6/9/2021  
Date of Mailing

  
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