

DATE OF DECISION: 4/17/20

DATE OF MAILING: 4/17/20

**BEFORE THE DURHAM TOWNSHIP
ZONING HEARING BOARD**

**RE: APPLICATION OF GARY PULAK FOR A VARIANCE FOR THE PROPERTY
LOCATED AT 1491 EASTON ROAD, DURHAM TOWNSHIP, BUCKS COUNTY,
PENNSYLVANIA, FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 11-5-110**

FINDINGS OF FACT

1. On Thursday, March 12, 2020 at 7:00 p.m. at the Durham Township Building, 215 Old Furnace Road, Durham Township, the Durham Township Zoning Hearing Board ("Board") opened a duly noticed hearing on the application of Gary Pulak (the "Applicant").
2. QOB Properties, LLC, is the record owner of the property located at 1491 Easton Road, Durham Township, also known as Bucks County Tax Map Parcel No. 11-5-110 (the "Property").
3. Gary Pulak is under agreement of sale with QOB Properties, LLC to purchase the property and as equitable owner, has the requisite standing to pursue this application.
4. Notice of the March 12, 2020 hearing was published in advance of the hearing in the February 27, 2020 and March 5, 2020 editions of The Intelligencer, a newspaper publication of general circulation in Durham Township.
5. Notice of the hearing was sent by first class mail to all property owners of record within 500 feet of the Property on February 28, 2020 by Donna Lee Eller, Administrative Assistant at Clemons Richter & Reiss.
6. Notice of the hearing was posted on the Property on March 3, 2020 at 11:00 a.m. by Edward A. Child, Zoning Officer for Durham Township.
7. The Property is located in the PC-I, Planned Commercial Industrial zoning district under the Durham Township Zoning Ordinance (the "Zoning Ordinance").
8. The Applicant seeks a variance pursuant to the Durham Township Stormwater Management Ordinance to request a waiver from having to comply with the provisions of the Stormwater Management Ordinance.
9. Introduced as exhibits at the zoning hearing are the documents identified on Schedule A attached to this decision. Schedule A is incorporated by reference as though fully set forth herein at length.
10. The applicant was not represented by counsel.

11. Gary Pulak, the Applicant, testified in support of the application at the hearing.
12. The following two residents requested and were granted party status: (1) Scott Blessing of 1435 Easton Road, Durham Township and (2) Kevin McCusker of 906 Sherers Hill Road, Durham Township.
13. The Property is approximately 113 acres in size.
14. Durham Creek runs along a portion of the southern property line and western property line of the Property.
15. The Applicant is proposing the construction of a new single-family dwelling, a pole barn, a parking area and a driveway.
16. The single-family dwelling has a proposed footprint of 3,000 square feet, the pole barn has a proposed footprint of 2,400 square feet, the parking area is proposed to be 3,600 square feet and the driveway is proposed to be 19,200 square feet.
17. The total increase in impervious surface is 28,200 square feet. This represents an approximate impervious surface ratio of .57 percent.
18. The Applicant contends that even without the construction of stormwater management facilities, there will be no increased stormwater leaving the Property due to the overall size of the Property.
19. The proposed buildings and structures will have a minimal visual impact due to their distance from Easton Road and the natural existing buffering on the Property.
20. The Property is subject to a conservation easement. The conservation easement allows for the construction of one additional residential structure and for the construction of any building or other structure for agricultural production or commercial equine activity. The conservation easement restricts the area where the residential structure can be built to a two acre building envelope.
21. Structures related to on lot sewage facilities and stormwater management facilities may be placed outside the two acre building envelope.
22. The Applicant did not obtain an expert opinion concerning whether the rate or volume of stormwater leaving the Property would increase as a result of the proposed buildings and structures. The Applicant contends that common sense dictates that due to the overall size of the Property, there will be no increase in the rate or volume of stormwater leaving the Property.
23. Richard Harvey of the Bucks County Planning Commission reviewed the proposal and found it acceptable with respect to compliance with the conservation easement. Mr. Harvey advised that stormwater management facilities could be placed outside the two acre building envelope.
24. The Applicant is proposing the demolition of an existing house on the Property.

25. Scott Blessing resides to the southeast of the Property and shares a common lot line with the Property. Stormwater flows from the Property towards his property due to the contours of the land.

26. Scott Blessing testified that there are currently stormwater problems due to the runoff from the Property and feels that the proposed impervious surface will result in additional runoff and be even more detrimental to his property.

27. Kevin McCusker advised that his property would not be affected by any additional stormwater runoff because his property is at a higher elevation than the Property.

28. Scott Mease, the Durham Township Engineer testified concerning the applicability of the stormwater management ordinance and related issues. Mr. Mease advised that when the land disturbance for a property exceeds 1 acre, an applicant is required to obtain a National Pollutant Discharge Elimination System permit from the Pennsylvania Department of Environmental Protection. Mr. Mease advised that it is his opinion with what the applicant is proposing on the Property an NPDES permit will be required. He further testified that the NPDES permit will require the installation of the same or even more stormwater management facilities than required by the Durham Township Stormwater Management Ordinance.

29. The surrounding neighborhood is primarily residential.

30. The Applicant's proposal to construct the single-family dwelling, the pole barn, parking area and driveway without compliance with the Durham Township Stormwater Management Ordinance is not suitable and not harmonious with uses of other properties in the surrounding neighborhood.

31. The Applicant's proposal will result in negative impacts on the surrounding neighborhood, including an increase in the rate and volume of stormwater leaving the Property.

CONCLUSIONS OF LAW

1. Required public notice of the hearing was made by sufficient publication, posting and mailing to affected property owners.

2. The Municipalities Planning Code provides that the Board shall consider the following with respect to a variance request:

The board shall hear requests for variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The board may by rule prescribe the form of application and may require preliminary application to the zoning officer. The 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 the zoning ordinance 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 the zoning ordinance 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.

53 P.S. §10910.2.

3. The Applicant failed to establish that the Stormwater Management Ordinance inflicts an unnecessary hardship on the Applicant. The Applicant did not provide any evidence concerning an unnecessary hardship.

4. The Applicant failed to introduce sufficient evidence to establish that the Property is subject to unique physical circumstances or conditions and that the unnecessary hardship is due to such conditions. The Applicant suggested that when he submitted the application, he was under the belief that the two acre building envelope contained in the conservation easement restricted the Applicant's ability to install stormwater management facilities outside of the building envelope. However, the Township confirmed with Richard Harvey that the conservation easement does not prohibit the installation of stormwater management facilities outside of the two acre building envelope.

5. The Applicant failed to establish that due to the physical circumstances or conditions, there is no possibility of developing the property in conformance with the Durham Township Stormwater Management Ordinance. In fact, the Applicant appears to be able to develop the property as he has proposed, but simply must comply with Stormwater Management Ordinance in doing so.

6. If there is a hardship, it is financial and has been created by the Applicant's desire to construct multiple buildings and structures and his desire to avoid the expense of stormwater management measures.

7. The variance, if granted, would impair the use of adjacent properties due to increased stormwater runoff being displaced on adjacent properties.

8. The Applicant failed to establish that he sought the minimum variance that would afford relief and represent the least modification possible of the regulation at issue. The Applicant did not suggest a willingness to satisfy any stormwater management requirements.

DECISION

AND NOW, this 17th day of April, 2020, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the Durham Township Zoning Hearing Board hereby **DENIES** the Applicant's request for a variance from the Durham Township Stormwater Management Ordinance.

DURHAM TOWNSHIP
ZONING HEARING BOARD

DATE: _____

David Oleksa, Chair

DATE: 4-17-20

Kenneth Hager
Kenneth Hager, Member

DATE: _____

E. Wayne Krager, Member

Scott A. MacNair, Esquire
Clemons Richter & Reiss, P. C.
Solicitor, Durham Township Zoning Hearing Board
2003 S. Easton Road, Ste. 300
Doylestown, Pennsylvania 18901
215.348.1776

7. The variance, if granted, would impair the use of adjacent properties due to increased stormwater runoff being displaced on adjacent properties.

8. The Applicant failed to establish that he sought the minimum variance that would afford relief and represent the least modification possible of the regulation at issue. The Applicant did not suggest a willingness to satisfy any stormwater management requirements.

DECISION

AND NOW, this 17th day of April, 2020, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the Durham Township Zoning Hearing Board hereby **DENIES** the Applicant's request for a variance from the Durham Township Stormwater Management Ordinance.

DURHAM TOWNSHIP
ZONING HEARING BOARD

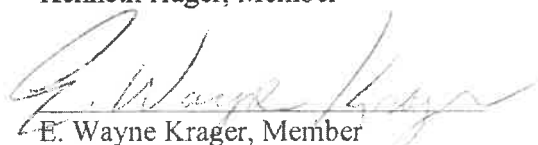
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SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
ZHB-1	Zoning Hearing Application as submitted 1/16/2020 with Deed and Maps
ZHB-2	Letter to Applicant dated February 24, 2020 with Notice of Hearing
ZHB-3	Letter to The Intelligencer dated February 24, 2020 to advertise Public Notice of hearing
ZHB-4	Public Notice
ZHB-5	Proof of Publication
ZHB-6	Affidavit of Mailing to property owners and sample letter sent to each
ZHB-7	List of property owners within 500' and Map
ZHB-8	Affidavit of Posting Notice at property
A-1	Plan of Existing Features for Property dated January 22, 2020, prepared by Dennis Litzenberger
A-2	Site Plan sketch depicting proposed impervious surface
B-1	Photograph of Scott Blessing's Property during rain
B-2	Photograph of Scott Blessing's Property during rain
B-3	Photograph of Scott Blessing's Property during rain
B-4	Photograph of Scott Blessing's Property during rain