

YORK TOWNSHIP

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The February meeting of the York Township Zoning Hearing Board was called to order by John Myers, Chair.

Those in attendance were:

John Myers, Chair
James Barnes, Vice Chair
William Descar, Secretary
Glen Myers, Asst. Secretary
Timothy Salvatore, Member
Anthony Pantano, Alternate Member
Kathleen Cronin, Alternate Member
Jeffrey Rehmeyer, Esquire, Solicitor
Lisa Frye, Zoning Officer

MINUTES OF JANUARY 28, 2020

The Zoning Hearing Board minutes of the January 28, 2020, meeting were approved.

DECISIONS OF JANUARY 28, 2020

The Zoning Hearing Board decisions of the January 28, 2020, meeting were approved.

SPECIAL EXCEPTIONS/VARIANCES/APPEALS

Application 2020-05: Drue Moore requests a Variance to establish Noncommercial Keeping of Livestock, for a maximum 10-year term, on property located at 2800 South George Street in a Commercial Shopping (CS) District.

Present: Jayne Katherman, Esquire
Drue Moore

York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077

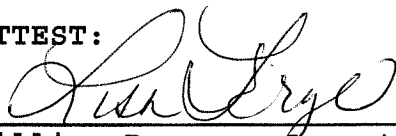
York Township Zoning Hearing Board
Tuesday, February 25, 2020

MOTION: On Application 2020-05, Drue Moore requests a Variance to establish Noncommercial Keeping of Livestock, for a maximum 10-year term, on property located at 2800 South George Street in a Commercial Shopping (CS) District, that the application be approved.

CONDITIONS: That the mobile home be removed; any debris on the property including the woodpile would have to be removed or brought into compliance; a time period for those things to be done would be three months; there be no additional animals brought onto the property unless and until there's some degree of attrition through whatever cause and at that juncture additional animals would be subject to township approval under Section 265.651.A; there would be inspections of the property on a yearly basis and if the property were found to not be in compliance on two or more times in any given year that the second time it would occur would be the basis for the Variance to be revoked; the period would be for ten years or until Mr. Moore no longer resides at the property.

MOTION MADE BY: James Barnes
SECONDED BY: William Descar
MOTION PASSED UNANIMOUSLY

ATTEST:



~~William Descar, Secretary~~

Lisa Frye, Zoning Officer

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2020-05

Hearing Date: February 25, 2020

Applicant: Drue Moore

Property Owner: LQ Properties, Inc.

Property: 2800 South George Street
UPI: 54-000-05-0004-00-00000

Existing Zoning District: Commercial Shopping (CS)

Relief Requested- Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-407 thereof.

FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. The Applicant was present. Attorney Jayne Katherman was present at counsel for the Applicant. James Halkius, Manager of LQ Properties, Inc. was present too, representing the Property Owner.
3. The Applicant was seeking a Variance for a Use consisting of the Non-Commercial Keeping of Livestock, for a maximum 10-year term (the "Use").
4. Attorney Katherman provided the Board with 11 Exhibits, which consisted of the following:
 - a. Exhibit 1 – Tax map showing the entire Property, with the portion leased to the Applicant by the Property Owner outlined in black.
 - b. Exhibit 2 – Zoning map showing the Property, including its proximity to other properties in the Residential Agriculture (RA), Residential Low Density (RL) and Commercial Shopping (CS) Zones.
 - c. Exhibit 3 – Photograph of the Property from across the street, from Joppa Road, focusing on the house and the barn on the Property.
 - d. Exhibit 4 – Photograph of the Property focusing on the house and the driveway to the South of it, which accesses the barn.
 - e. Exhibit 5 – Photograph of the upper portion of the Property.
 - f. Exhibit 6 – Google Earth aerial map showing the entire Property.
 - g. Exhibit 7 – Photograph of the Property partway up the driveway.
 - h. Exhibit 8 – Photograph of the barn from the upper portion of the Property.
 - i. Exhibit 9 – Photograph looking up the driveway showing the trailer.
 - j. Exhibit 10 – Photograph showing a pasture area.
 - k. Exhibit 11 – Photograph showing another pasture area.

5. In response to questions from Attorney Katherman, Mr. Halkius testified as follows:
 - a. He is the Manager of LQ Properties, Inc., which owns the Property.
 - b. Mr. Moore has been a tenant for approximately 5 years.
 - c. He supports the Application for and requests the grant of the Variance for Use.
6. Attorney Katherman called Mr. Moore who referenced the Exhibits and testified as follows:
 - a. He lives in the house on the Property, which has a street address of 2794 South George Street, as shown on Exhibits 1 and 2.
 - b. The portion of the Property that he leases is just less than 5 acres.
 - c. The prior use of the Property was that of a residence with horses.
 - d. Improvements on the Property include the house, the barn, fencing and gating.
 - e. With regard to Exhibit 3, Mr. Moore noted that the barn has 6 horse stalls and is located up on the hill.
 - f. He further explained that access to the barn is via the driveway that enters onto the Property from South George Street at the southern portion thereof, as shown on Exhibit 4.
 - g. Exhibit 5 was taken halfway up the Property, facing West among many trees.
 - h. Exhibit 6 shows the property from above, from the Fall.
 - i. Exhibit 7 shows the driveway partway up from South George Street before the driveway switches back.
 - j. When viewing Exhibit 7, Mr. Moore also noted that the Property is hilly and has steep slopes.
 - k. With regard to Exhibit 8, Mr. Moore indicated that the horse barn was constructed in 1974.
 - l. With regard to Exhibit 9, Mr. Moore explained that there is an older trailer behind the barn, which is used only for storage purposes because it is not habitable.
 - m. Mr. Moore also admitted that the trailer was previously connected to water and sewer but has since been disconnected.
 - n. Mr. Moore also explained that the Property has extensive fences.
 - o. With regard to Exhibits 10 and 11, Mr. Moore explained that the fencing was in a state of disrepair but he has been systematically repairing and improving the fencing and such work was permitted.
7. With regard to the Use, Mr. Moore testified as follows:
 - a. He has a total of 54 animals on the Property, to include:
 - i. 25 chickens (including 2 roosters).
 - ii. 18 ducks.
 - iii. 4 potbellied pigs.
 - iv. 2 alpacas.
 - v. 2 donkeys.
 - vi. 2 goats.
 - vii. 1 pony.(Collectively the "Livestock").
 - b. He explained that he had rescued all of the Livestock
 - c. He indicated that he does not intend to rescue any more animals so as to increase the number of Livestock beyond that for which relief is requested pursuant to this Application.
 - d. The Livestock are housed in the horse barn.
 - e. He does not think the Livestock causes any visual impact to others beyond the Property.
 - f. He does not believe there are any offensive odors generated by the Livestock.

- g. He does not think there is any offensive noise generated by the Livestock.
8. When questioned, Mr. Halkius answered as follows:
- a. He thought about trying to rezone the Property but could not persuade the owner of the property to the South to join him in such a pursuit.
 - b. He attempted to purchase that property to the South, but it is not being offered for sale, but rather only for rental.
9. With regard to the criteria in Section 265-407 of the Ordinance, the following was offered:
- a. The Property does exceed the minimum lot area of 2 acres, and Mr. Moore believes that the current combination of Livestock is acceptable in terms of the density as allowed by the Ordinance.
 - b. The barn structure used to house the Livestock is not located in the front yard, but may not be 100 feet from the side setback of the Property.
 - c. The outdoor pasture/recreation areas are enclosed with fencing sufficient to prevent the escape of all Livestock, which fencing is believed to be 10 feet from all Property lines.
 - d. All Livestock and their housing and outdoor pasture recreation areas will be properly maintained so as not to become a nuisance to adjoining properties.
 - e. All non-commercial keeping of Livestock shall comply with all applicable federal and state laws.
10. Keith Lutz presented testimony on behalf of the Township as follows:
- a. He is the Township Code Enforcement Officer.
 - b. Mr. Lutz provided a number of documents to include the following:
 - i. April 23, 2019 letter to the Property owner, which noted violations of Township Ordinances.
 - ii. Various photographs of junk and debris on the Property, as well as the trailer.
 - iii. May 13, 2019 letter from the Township to the Property owner (second notice with added photographs showing debris on the Property and the trailer).
 - iv. Non-Traffic Summons Citation #R1992067-0 for doing work without a required Building Permit, with a notation the Owner was found guilty on October 21, 2019 and paid the total due in full on November 27, 2019.
 - v. Non-Traffic Summons Citation #R1992068-1 for accumulation of rubbish and property, with a notation the Owner was found guilty on October 21, 2019 and paid the total due in full on November 27, 2019.
 - vi. Non-Traffic Summons Citation #R1992066-6 for the Property not being maintained in a sanitary condition, with a notation the Owner was found guilty on October 21, 2019 and paid the total due in full on November 27, 2019.
 - vii. Some additional photographs of the Property taken as of January 23, 2020, showing the Livestock, debris and the previously noted woodpile with a trap over it.
 - c. He explained that some Livestock that was on the Property escaped and was found by third parties.
 - d. Specifically, the Livestock was on South George Street.
 - e. When visiting the Property, he noticed serious Property maintenance and debris accumulation issues.
 - f. Additionally, the trailer was not permitted.
 - g. The trailer was connected to public water and sewer.
 - h. There was no permit for such connection.

- i. The trailer is approximately 12 wide by 32 feet long for a total of 384 square feet.
 - j. Thus, the trailer cannot be considered a shed, as its size exceeds 240 square feet.
 - k. Accordingly, the trailer must be repaired to meet the applicable portions of the Building Code or be removed from the Property.
11. Sally Kashner, an adjoining neighbor presented testimony as follows:
 - a. The neighborhood has been experiencing problems because of the Livestock, as recently as December 30 and 31, 2019.
 - b. Specifically, there were animals on the yards in the neighborhood.
 - c. Sometimes the animals are found grazing in her yard.
 - d. The animals include horses and goats, which also leave messes behind.
 - e. One of the pigs is a boar of substantial weight.
 - f. The police have been called about these issues.
 - g. When called, the police have sometimes utilized a bullhorn to help rectify the situation.
 - h. Occasionally, she can hear animal noises, to include the rooster and goats.
 - i. She would not, however, classify the noises as a nuisance.
 - j. She has not experienced offensive odors.
12. Attorney Katherman called Mr. Moore who provided the following rebuttal testimony:
 - a. Since the Citations were received, hearings held and fines paid as referenced above, he has spent time cleaning up the Property.
 - b. The woodpile has been covered.
 - c. He spent time working on the fences to avoid the Livestock getting loose.
 - d. He also asserted that the Livestock are not dangerous.
 - e. Further, any chickens roosting on the fences typically do so on the fences on the interior of the Property.
 - f. He was not aware of any Livestock escaping more recently that as indicated by Mrs. Kashner, which escape should no longer occur because of his work on the fences.
13. On behalf of the Township, the Zoning Officer reiterated the concerns expressed by Codes Enforcement Officer Lutz.
14. In response to the criteria for the Variance, the Applicant provided the following:
 - a. The unnecessary hardship that exists is due to unique physical circumstances or conditions, which include the irregular size of the Property and its exceptional topography including steep slopes and other physical conditions peculiar to the Property and the presence of the barn on the Property, which facilitated the prior use of the Property for the boarding of horses, and such unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provision of this chapter 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 developed in strict conformity with the provisions of this Chapter and the authorization of a Variance is therefore necessary to enable the reasonable use of the Property.
 - c. The unnecessary hardship is not being created by the Applicant.
 - d. The Variance, if authorized, will not alter the essential character of the neighborhood or district in which the Property is located, because of the prior use of the Property and its presence near a variety of uses, to include County Park land and open space, nor substantially or permanently impair the

appropriate use or development of adjacent property nor be detrimental to the public welfare, provided that the Conditions are followed.

- e. The Variance, if authorized, will represent the minimum Variance that will afford relief and will represent the least modification possible to the regulation at issue.
15. Attorney Katherman indicated that her client would be agreeable to an extensive number of conditions that must be strictly followed, if the Variance were granted. They included the following:
- a. Any relief granted to allow the Non-Commercial Keeping of Livestock would be for a term of 10 years from the date of the Decision, or the time that the Applicant no longer resides on the Property, whichever first occurs.
 - b. All debris, including the woodpile (as noted in the Citations referenced above or otherwise by the Township) shall be removed from the Property within 3 months of the date of the Decision, such that the Property would be in full and complete compliance with all applicable Ordinances and laws (local, state and federal), as determined by Keith Lutz, Township Code Enforcement Officer or another duly authorized representative of the Township.
 - c. Such compliance would be determined by inspection, which would also include an inspection of the fence to ensure it is adequate to contain the Livestock on the Property.
 - d. There shall be no additional animals brought onto the Property until the existing number decreases by attrition.
 - e. After the existing number of existing Livestock decreases by attrition, then additional Livestock could be brought onto the Property, provided that the Applicant would continue to obey all Township Ordinances and the Conditions of this Decision.
 - f. If additional Livestock were to be brought onto the Property, then it would occur only subject to prior written approval of the Township and the allowance of additional Livestock would be based upon the number and type of animals (as then currently on the Property and proposed to be brought onto the Property), as interpreted in accordance with Section 265-651(a) of the Ordinance, in the discretion of the Township Zoning Officer or other duly authorized representative of the Township.
 - g. The Property would be subject to yearly inspections to ensure on-going compliance with applicable law and the Conditions of this Decision. Inspections would be at the expense of the Applicant. Applicant' failure to pay for them would be a violation of this Decision.
 - h. If the Applicant fails to maintain compliance with all applicable laws and Conditions of this Decision for 2 or more instances in any calendar year, then the Variance can be revoked by notice from the Township without any further action or hearing before the Zoning Hearing Board. For purposes of non-compliance, the escape of a non-feathered Livestock would be a violation; however, the escape of feathered Livestock would not.
(Collectively the "Conditions").
16. The Applicant and Applicant's counsel agreed that the Conditions would be acceptable.

CONCLUSIONS OF LAW


Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:

1. The prior use of the Property, keeping of horses, and the presence of the barn that housed the horses, are significant factors in this Decision.
2. Additionally, the hilly topography of the Property, and its location and proximity to other zones and the York County Park, with Lake Williams, are also significant factors.
3. Without the imposition and full compliance with all of the Conditions, the grant of the Variance would not be possible.
4. Subject to full and continuing compliance with the Conditions (as determined by inspection three months from the date of this Decision and on-going inspections thereafter), the Applicant has met the criteria for a Variance.

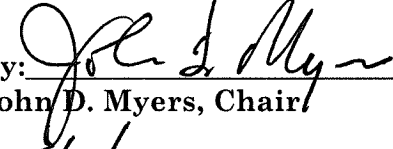
Accordingly, Jim Barnes moved, and William Descar seconded, to grant the Variance to establish Non-Commercial Keeping of Livestock, for a maximum 10-year term, subject to the Conditions, on the Property located at 2800 South George Street, in a Commercial Shopping (CS) Zone. The motion passed unanimously with John D. Myers, Glenn Myers, William Descar, Jim Barnes and Timothy Salvatore voting in favor of the motion.

WITNESS/ATTEST

**YORK TOWNSHIP
ZONING HEARING BOARD**



 William Descar, Secretary
 Lisa Frye, Zoning Officer

By: 

 John D. Myers, Chair
 5/13/2020

 Date

The Variance granted herein shall expire if the Applicant fails to, where required to do so, obtain a Permit, submit a Land Development Plan or commence work within six (6) months of the date of the authorization of the Variance, pursuant to Section 265-1009. E. of the Ordinance.