

COPY

In Re: Middlecreek Property Holdings : MILLCREEK TOWNSHIP
LLC and M&B Holdings Company LLC :
Petition for Variance :
: LEBANON COUNTY, PENNSYLVANIA
: CASE # 1-24

**DECISION OF THE ZONING HEARING BOARD
OF MILLCREEK TOWNSHIP**

I. INTRODUCTION

The Zoning Hearing Board of Millcreek Township (hereinafter "ZHB"), Lebanon County, Pennsylvania, met on Monday, February 26, 2024 at a duly advertised public session to hear a Petition for Variance submitted by Middlecreek Property Holdings LLC and M & B Holding Company LLC.

II. FINDINGS OF FACT

1. The Petitioners are Middlecreek Property Holdings LLC and M&B Holding Company LLC, both with an address of 5 Stump Road, Newmanstown, PA 17073-9153. Their interests were represented by Matthew Mack, P.E. and Eric Vosburgh of Mack Engineering, Inc.¹ (Hearing Exhibit 1, Hearing Testimony).

2. Petitioner Middlecreek Property Holdings LLC is the owner of 328 Stricklerstown Road, Newmanstown, PA 17073, consisting of approximately 9.99 acres, GPIN #24-2393207-363844-0000. (Hearing Exhibits 1, 10).

¹ Mr. Mack testified that Mack Engineering, Inc. was authorized by the principal of both Limited Liability Companies to represent the property owners' interests at the Zoning Hearing.

3. Petitioner M & B Holding Company LLC is the owner of 334 Stricklerstown Road, Newmanstown, PA 17073, consisting of approximately 9.80 acres, GPIN #24-2393073-363395-0000. (Hearing Exhibits 1, 10).

4. 328 Stricklerstown Road and 334 Stricklerstown Road (“Subject Properties”) are adjacent properties located in the C-2 Convenience Commercial zoning district. (Hearing Exhibits 1, 10).

5. 328 Stricklerstown Road is improved with a single-family dwelling. (Hearing Testimony).

6. 334 Stricklerstown Road is improved with an existing roofing business. (Hearing Testimony).

7. Petitioners propose to construct mixed commercial uses on the Subject Properties, including a café, pet resort, self-storage units, and contractor offices/shops. (Hearing Exhibit 1).

8. A variance is being sought to Section 10.02 of the Millcreek Township Zoning Ordinance, related to Permitted Uses in the C-2 District, to allow uses such as a café, pet resort, self storage units, and contractor office/shops, which are not permitted in the C-2 zoning district. Petitioner argues that such uses are permitted in the C-1 district and are similar to or less intensive than the uses permitted in the C-2 district. (Hearing Exhibit 1).

9. A variance is also being sought to Section 10.03.C. of the Millcreek Township Zoning Ordinance, which requires side and rear yard setbacks of no less than fifty (50) feet with appropriate landscaping where such yards adjoin a residential district. Petitioner submits that such increased setbacks are unnecessary because the adjoining

residential zone properties consist of large farms and a lot that appears to have commercial truck body storage. (Hearing Exhibit 1).

10. A hearing to consider Petitioners' request for a Variance was scheduled for Monday, February 26, 2024, at 7:00 p.m. at the Millcreek Township Municipal Building, 81 East Alumni Avenue, Newmanstown, PA 17073. (Hearing Exhibit 3).

11. Notice of the zoning hearing was duly advertised in the *Lebanon Daily News* on Monday, February 12, 2024 and Monday, February 19, 2024. (Hearing Exhibit 4).

12. Notice of the zoning hearing was sent to Township officials and neighboring property owners by United States First Class Mail. (Hearing Exhibit 5).

13. Notice of the zoning hearing was posted on the Subject Properties on February 16, 2024. (Hearing Exhibit 7).

14. The Petition for Variance was heard by the Millcreek Township ZHB before Zoning Hearing Board Members Robert Beisel, Chairman; Timothy Bartow, Vice-Chairman; and Scott Sweigart, Member.

15. Present at the February 26, 2024 zoning hearing were:

Robert Beisel – ZHB Chairman

Timothy Bartow – ZHB Vice-Chairman

Scott Sweigart – ZHB Member

Matthew Mack, P.E. – Representative and Engineer for Petitioner

Eric Vosburgh – Representative for Petitioner

Kimberly Paugh – Zoning Officer, Lebanon County Planning Department

Kathy J. Sheffy, Court Stenographer

Amy B. Leonard, Esquire – ZHB Solicitor

Members of the Public²

16. Mr. Mack and Mr. Vosburgh presented the case for the variances on behalf of the Petitioners. (Hearing Testimony).

17. Mr. Mack presented a concept plan showing the various proposed uses on the Subject Properties. (Hearing Testimony).

18. Mr. Mack noted that there were areas deemed viable for on-lot septic to serve the uses, and that there would be no construction within the floodplain areas. (Hearing Testimony).

19. Mr. Mack indicated that Petitioner's position is that the permitted uses in the C-2 District, which include shops for the retailing of food, drugs, and pharmaceutical products; automobile service and filling stations (subject to certain conditions); communications antennas and communications equipment buildings; churches; and group care facilities (by special exception) are "more intense" than the uses being proposed by Petitioner. (Hearing Testimony).

20. Mr. Vosburgh, the Petitioners' architect, testified that the proposed café would be located in the existing residential dwelling at 328 Stricklerstown Road, which would be renovated to accommodate the new use. (Hearing Testimony).

21. Additional uses proposed for 328 Stricklerstown Road include three (3) shop buildings, each approximately 12,000 square feet, an outdoor parking area for 20-40 recreational vehicles, and 304 self-storage units. (Hearing Testimony, Exhibit 9).

22. Mr. Vosburgh noted that all the proposed uses are service industry uses, and that Petitioners are proposing thirty (30) foot setbacks for the side and rear yards instead of fifty (50) feet. (Hearing Testimony).

² Members of the public present at the hearing are as identified on the sign-in sheet.

23. The property at 334 Stricklerstown Road currently is used for one of Petitioner's businesses, Middle Creek Roofing. (Hearing Testimony).

24. The new proposed uses for 334 Stricklerstown Road include a new shop building and a "pet resort", consisting of one primary building 6,012 square feet in size and three (3) kennels, ranging in size from 2,818 square feet to 3,192 square feet, capable of housing one hundred forty (140) dogs in total. (Hearing Testimony, Exhibit 9).

25. The Zoning Hearing Board raised concerns about the apparent lack of floodplain buffers shown on the concept plan, noting that some structures appeared to be located immediately adjacent to the flood boundary. (Hearing Testimony, Exhibit 9).

26. The Zoning Hearing Board also raised concerns about a residential property located along Stricklerstown Road between Petitioners' Subject Properties and a lack of buffers put in place to protect the residential property. (Hearing Testimony).

27. The Zoning Hearing Board noted that the intent of the C-2 District was to maintain residential/agricultural aspects of those areas by limiting commercial uses to certain commercial convenience facilities, while permitting service industry and retail uses specifically within the C-1 Retail Business District. (Hearing Testimony).

28. When questioned, Petitioners' representatives agreed that the Subject Properties could be used for the permitted uses specified in the Zoning Ordinance for the C-2 District. (Hearing Testimony).

29. Petitioners' representatives also agreed that they could develop the property in conformance with the setbacks for the C-2 District as stated in Section 10.03.C.; however, they noted that Petitioner wished to build the property to the "highest density". (Hearing Testimony).

30. Petitioners' representatives were questioned as to whether the proposed concept plan was compliant with Section 16.04 of the Zoning Ordinance, which requires that where more than one structure housing a permitted or permissible use is erected on a single lot, each structure must meet yard and other zoning requirements as though it were on an individual lot. (Hearing Testimony).

31. Petitioners' representatives agreed that kennels are not permitted in either the C-1 or C-2 Zoning Districts, but in the Agricultural District as a special exception. (Hearing Testimony).

32. Petitioners' representatives agreed that self-storage units were not specifically permitted in either the C-1 or C-2 Zoning Districts. (Hearing Testimony).

33. Members of the public asked a number of questions and made comments about the proposed lighting for the property, fencing for the self-storage units, ingress/egress onto Stricklerstown Road, existing utility rights-of-way, traffic concerns, and compatibility with the neighborhood. (Hearing Testimony).

34. The Millcreek Township Planning Commission's draft meeting minutes of February 7, 2024 indicated that the Planning Commission had reviewed the variance request from Petitioners and they did not recommend approval of the variance request. The Planning Commission noted the proposed uses did not correspond to the intent of the zoning district, and further noted that the multiple uses proposed on the property increased the potential for traffic and would change the nature and character of the neighborhood. (Hearing Exhibit 12).

35. The Planning Commission did not recommend relief from the required setbacks and landscape buffers, and indicated such setbacks and buffers were necessary to protect and separate commercial uses from residential uses now and in

the future. The Planning Commission noted that no hardship was evident. (Hearing Exhibit 12).

III. HEARING EXHIBITS

Hearing Exhibit 1 – Amended Petition for Variance

Hearing Exhibit 2 – Original Petition for Variance

Hearing Exhibit 3 – Notice of Public Hearing

Hearing Exhibit 4 – Proof of Publication in the *Lebanon Daily News* on February 12, 2024 and February 19, 2024

Hearing Exhibit 5 – Mailing List

Hearing Exhibit 6 – Signed variance criteria

Hearing Exhibit 7 – Photo of public notice posted on 334 Stricklerstown Road

Hearing Exhibit 8 – Photo of public notice posted on 328 Stricklerstown Road

Hearing Exhibit 9 – Proposed concept plan for Subject Properties

Hearing Exhibit 10 – Existing conditions plan for Subject Properties

Hearing Exhibit 11 – Aerial view of Subject Properties

Hearing Exhibit 12 – Draft meeting minutes of the Millcreek Township Planning & Zoning Commission dated February 7, 2024

IV. DISCUSSION

The Petitioners are Middlecreek Property Holdings LLC and M&B Holding Company LLC, both with an address of 5 Stump Road, Newmanstown, PA 17073-9153. Their interests were represented by Matthew Mack, P.E. and Eric Vosburgh of Mack Engineering, Inc. Petitioner Middlecreek Property Holdings LLC is the owner of 328 Stricklerstown Road, Newmanstown, PA 17073, consisting of approximately 9.99 acres,

GPIN #24-2393207-363844-0000. Petitioner M & B Holding Company LLC is the owner of 334 Stricklerstown Road, Newmanstown, PA 17073, consisting of approximately 9.80 acres, GPIN #24-2393073-363395-0000. 328 Stricklerstown Road and 334 Stricklerstown Road (“Subject Properties”) are adjacent properties located in the C-2 Convenience Commercial zoning district. 328 Stricklerstown Road is improved with a single-family dwelling. 334 Stricklerstown Road is improved with an existing roofing business. Petitioners propose to construct mixed commercial uses on the Subject Properties, including a café, pet resort, self-storage units, and contractor offices/shops.

A variance is being sought to Section 10.02 of the Millcreek Township Zoning Ordinance, related to Permitted Uses in the C-2 District, to allow uses such as a café, pet resort, self-storage units, and contractor office/shops, which are not permitted in the C-2 zoning district. Petitioner argues that such uses are permitted in the C-1 district and are similar to or less intensive than the uses permitted in the C-2 district. A variance is also being sought to Section 10.03.C. of the Millcreek Township Zoning Ordinance, which requires side and rear yard setbacks of no less than fifty (50) feet with appropriate landscaping where such yards adjoin a residential district. Petitioner submits that such increased setbacks are unnecessary because the adjoining residential zone properties consist of large farms and a lot that appears to have commercial truck body storage.

A Zoning Hearing Board may grant a variance when all of the following criteria are met: (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 applicant; (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; and (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. Pennsylvania Municipalities Planning Code, Section 910.2.

An applicant must establish all elements to be entitled to a variance. See *Demko v. City of Pittsburgh Zoning Board of Adjustment*, 155 A.3d 1163, 1172 (Pa. Commw. Ct. 2017). A variance is the proper relief where an unnecessary hardship attends the property; a variance cannot provide relief where a hardship afflicts the property holder's desired use of the land and not the land itself. *Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595, 598 (Pa. Commw. Ct. 2001). Although zoning ordinances are to be liberally construed to allow for the broadest possible use of the land, the applicant seeking a variance bears a heavy burden. See *Beers ex rel. P/O/A Beers v. Zoning Hearing Board of Towamensing Township*, 933 A.2d 1067, 1069 (Pa. Commw. Ct. 2007); *Borough of Latrobe v. Paul B. Sweeney*, 17 Pa.Cmw. 356, 331 A.2d 925, 927 (1975) (personal and economic considerations are not sufficient grounds upon which to base the grant of a variance). The reasons for granting a variance must

be substantial, serious, and compelling. *Valley View Civic Association v. Zoning Board of Adjustment*, 462 A.2d 637, 640 (Pa. 1983).

Evaluating each of the criteria required to grant a variance, Petitioners cannot meet all the elements here. First, there is no unnecessary hardship. Petitioners have not presented any evidence that the Subject Properties contain unique physical circumstances or conditions that affect it. Although the properties are affected by a floodplain, there was no testimony that the existence of the floodplain on either property prevented the Petitioners from either pursuing uses that are permitted in the C-2 Zoning District or complying with the minimum 50-foot side and rear yard setbacks and landscape buffers where the side and rear yards adjoin a residential district. To the contrary, Petitioners' representatives stated that there was nothing that prevented them from developing uses permitted in the C-2 Zoning District. Likewise, the evidence presented at the hearing was clear that Petitioners could meet the required setbacks – they simply did not wish to do so because they would not be able to develop the Subject Properties to the maximum extent possible.

Second, a variance is not necessary to enable the reasonable use of the Subject Properties. The properties have already been developed in accordance with the zoning regulations for the C-2 Zoning District or presently contain nonconforming uses. The property located at 328 Stricklerstown Road has been developed as a single-family detached dwelling, and this use could be continued. The property located at 334 Stricklerstown Road has been developed with a roofing business. Therefore, the Subject Properties are each improved with uses that could continue. Additionally, Petitioners could develop the properties with any of the permitted uses in the C-2 Zoning District – they simply do not wish to pursue those uses. Furthermore, denying a

variance to the setback requirements does not prevent reasonable use of the property. In this case, by Petitioners' representatives' own admission, it is possible for Petitioners to meet the setback requirements applicable to the C-2 Zoning District.

Third, any hardship asserted by Petitioners is self-inflicted, as the any alleged "hardship" is related only to Petitioners' desire to construct as many commercial uses of any type they wish on the property. The testimony of Petitioners' representatives was clear that Petitioners could pursue permitted uses in the C-2 Zoning District and could meet the setback requirements. There is no evidence of a hardship resulting from the land itself.

The Zoning Hearing Board further considered that the variances, if authorized, would alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, as there were concerns raised by neighbors. The larger setbacks for side and rear yards and required landscape buffers specifically protect neighboring residential properties from unwanted effects of commercial development in the C-2 Zoning District. Petitioners' suggestion that these measures do not need to be met, despite proposing a multitude of commercial uses on the property (none of which are appropriate in the C-2 District) undermines the purpose of the increased setbacks. Moreover, Petitioners' proposal to construct various commercial uses on the property that are not permitted in the C-2 District would significantly affect the character of the neighborhood, which is primarily rural and residential. While the need for certain commercial convenience facilities is recognized in the Zoning Ordinance, it is clear that the intent of the C-2 District provisions was to restrict commercial activity to only a few essential uses, while designating the C-1 Retail

Business Districts as areas intended for more intensive commercial uses such as retail shopping, restaurants, professional offices and banks, and personal service shops. Allowing the Subject Properties to be developed as a multi-commercial complex type of area would significantly affect the neighborhood in terms of traffic, lighting, signage, and noise.

Finally, Petitioners have not met their burden of proving that the variance requested is the minimum variance that would afford relief, as Petitioners do not need a variance to comply with the setbacks or to pursue other permitted uses of the Subject Properties, or to allow the present uses of the Subject Properties to continue. Petitioners' representatives' testimony established that the variances requested were a matter of preference rather than actual necessity.

Because Petitioners have not established all the elements necessary to be entitled to a variance to Section 10.02 or Section 10.03.C. of the Millcreek Township Zoning Ordinance, the request for variances will not be granted.

DECISION

Now, therefore, this 26th day of February, 2024, the Zoning Hearing Board of Millcreek Township, by a 3-0 vote, hereby DENIES the Petition for Variance filed by Petitioners Middlecreek Property Holdings LLC and M & B Holding Company LLC.



Robert Beisel, Chairman
Millcreek Township
Zoning Hearing Board

Date: April 4, 2024