

IN RE: : BEFORE THE ZONING HEARING BOARD  
: OF EAST HANOVER TOWNSHIP  
APPLICATION FOR VARIANCES OF :  
PAUL W. NAVARRO AND ASHLEY : HEARING: February 26, 2018  
M. NAVARRO :  
: DECISION: February 26, 2018  
No. 2018.01 :  
: WRITTEN DECISION MAILED: April 10,  
: 2018  
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**DECISION OF THE ZONING HEARING BOARD**

The Zoning Hearing Board of East Hanover Township, Dauphin County, Pennsylvania, conducted a properly advertised and properly posted public hearing on February 26, 2018, commencing at approximately 7:00 p.m., upon the Application for Variances of Paul W. Navarro and Ashley M. Navarro, with respect to the property located at 150 Brooksmill Road, Grantville, Pennsylvania, 17029, and being Tax Parcel No. 25-009-024.

Notice of the hearing was published in *The Sun* on February 8, 2018, and February 15, 2018, in accordance with the requirements of the Pennsylvania Municipalities Planning Code and the East Hanover Township Zoning Ordinance. Additionally, in compliance with Section 603.1.1 of the Zoning Ordinance, written notice of the hearing was conspicuously posted on February 12, 2018, on and about the property which is the subject of the hearing. Jackie Wilbern, the East Hanover Township Assistant Manager and Zoning Officer, was present at the hearing and confirmed that the notice was posted. Furthermore, Ms. Wilbern confirmed that she had provided and mailed written notices of the hearing on February 12, 2018, to those property owners adjacent to the subject property as identified in the Application for Variances as well as to the Applicant.

Members of the Zoning Hearing Board, JoLynn L. Stoy, Chairman, Shirley Allison and Mark Stremmel, constituted a quorum and were present throughout the hearing. Also present were: Paul J. Navarro of Navarro & Wright Consulting Engineers, Inc. and Susan H. Confair, Esquire, of Reager & Adler, P.C. on behalf of the Applicants; and E. Lee Stinnett II, Esquire, of Salzman Hughes, P.C., representing East Hanover Township. All witnesses who offered testimony during the course of the hearing were duly sworn.

### **FINDINGS OF FACT**

Applicants, Paul W. Navarro and Ashley M. Navarro, are the owners of the property known as 150 Brooksmill Road, Grantville, PA 17029, and being Tax Parcel No. 25-009-024. The subject property is a single tract of land having a total area of approximately 67.792 acres which is generally situated to the north of Interstate Route 81, to the east of Manada Bottom Road and Brooksmill Road as well as to the south of Rabbit Lane. Applicants' property is located in a Rural Agricultural zone (RA) pursuant to Section 201 of the East Hanover Township Zoning Ordinance.

Applicants are seeking relief from the 150 ft. minimum lot width requirements of Section 201.5.2.A of the Zoning Ordinance for single-family detached dwellings. Minimum lot width is measured at the building setback line in accordance with Zoning Ordinance Section 201.5 Design Requirements. The lot width of the subject property is sixty (60) feet at its connection with Brooksmill Road.

Applicants are also seeking relief from Zoning Ordinance Section 308, which requires access to a public right-of-way or approved private street. Brooksmill Road does not meet this requirement.

In 2014 a single-family home was built on the westernmost portion of Applicants' property in substantially closer proximity to Brooksmill Road than Rabbit Road. Applicants' property is significantly irregular in shape and subject to various elevation changes. The location, boundaries and topographical features of Applicants' property are more specifically set forth on the copy of the "Final Subdivision Plan for Paul W. Navarro Property" dated August 8, 2017, and revised September 12, 2017, which was submitted as part of the application for variances.

At hearing of the matter, in addition to the Application for Variances, various exhibits were admitted as part of the record, including: (1) Township Exhibit No. 1 being a photograph of the Notice of Hearing posted upon the subject property; (2) Zoning Hearing Board Exhibit No. 1 being a copy of the proof of publication of the Notice of Hearing; (3) Applicants' Exhibit No. 1, being a copy of a Stormwater Management Plan dated May 1, 2014; (4) Applicants' Exhibit No. 2, being a copy of the "Final Plan for Brooksmill Phase I" recorded in the Office of the Recorder of Deeds, Dauphin County, at Plan Book R, Volume 5, Page 6; (5) Applicants' Exhibit No. 3 being titled "Subdivision Plan for 150 Brooksmill Road," drawing C200, dated August 8, 2017; and (6) Applicants' Exhibit No. 4 being an aerial view photo of the Brooksmill Road right-of-way and adjoining entrance to the subject property.

Applicant is proposing, subject to subsequent approval of East Hanover Township, to seek a subdivision of the subject property into two (2) lots. The area designated as Lot No. 1 shall be the western portion of the subject property and have an area of approximately 37.26 acres. The area designated as Lot No. 2 shall consist of the eastern portion of Applicants' property and have an area of approximately 30 acres.

Only one northern property line of proposed Lot No. 2 abuts Rabbit Lane providing a lot width of approximately 350 ft. along this public right-of-way. An electric utility right-of-way traverses the northernmost property line of Lot No. 1 and then bisects the northern portion of Lot No. 2.

Vehicular access to Lot No. 1 is solely from Brooksmill Road. A cul-de-sac is located at the eastern terminal end of Brooksmill Road and is part of Lot No. 1. The cul-de-sac has not been constructed in accordance with Township specifications, nor has it been dedicated to the Township. Brooksmill Road is an improved private road which the parties acknowledge has been accepted, if not dedicated, plowed and generally maintained by the Township. However, no evidence of formal dedication was located or presented by either party.

The Brooksmill Road right-of-way ends at its juncture with the cul-de-sac as shown on Applicants' Exhibit No. 1. A cul-de-sac, however, is required at the terminal end of a road by the East Hanover Township Subdivision and Land Development Ordinance. Brooksmill Road serves as the sole access to six (6) individual residential lots (Nos. 3, 4, 7-10) upon which single-family homes have all been constructed since 1993.

A prior owner and developer, McNaughton Company, initially purchased this property in 1993. It is estimated that Brooksmill Road was built sometime in the early 1990's. At or about 2007, Mr. and Mrs. Punt, acquired the sixty (60) acre subject property which was then sold to the Applicants' in 2014. No survey images from the time of acquisition by the prior developer of the property are available and there is no maintenance agreement amongst adjoining lot owners with respect to Brooksmill Road and the cul-de-sac recorded of public record. Brooksmill Road was eventually paved in 2014.

A subdivision plan was recorded on November 22, 1993, at Plan Book R, Volume 5, Page 60, which identifies six (6) individual residential building lots. These lots were the first phase of a project which was then developed at and after 1994. The subject property was at one time identified as a potential second phase for future development. Between 1993 and 2017 no additional subdivision plans have been submitted to or approved by the Township with respect to the sixty (60) acre subject property.

The six (6) individual single-family homes and lots were constructed adjoining and having direct driveway access from Brooksmill Road pursuant to approved building permits issued by the Township. All six (6) single family residences adjoining Brooksmill Road as described herein are serviced by on-lot sewage disposal systems and private wells.

As a condition of constructing Applicants' home in 2014 on the sixty (60) acre subject property, detention basins, infiltration beds, rain gardens, water diversion channels and other storm water management facilities were required to be designed, approved, and provided by the Applicants as set forth on Applicants Exhibit No. 1 – Stormwater Management Plan. Such storm water management facilities are located at various sites on the subject property in proximity to Applicants' residence, including the entrance to Applicants' driveway and property from Brooksmill Road.

There are no other sources of access to Applicants' residence other than directly from Brooksmill Road and the driveway connected to the cul-de-sac which is noted on Applicants' Exhibit No. 1. A building permit was issued in July 2014 and construction of Applicants' residence was completed in the fall of 2014. A barn, fenced pasture areas and other amenities were also constructed on the property. Applicants' home is serviced by a private well and an elevated sand mound on-lot sewage disposal system.

Proposed Lot No. 1 shall continue to be used for single-family dwelling purposes and the existing riding stables. There shall also be no change in any other amenities which are indicated on Applicants' plans which have been submitted as part of the record. Lot No. 2 is presently undeveloped and available for agricultural and other uses provided by Zoning Ordinance Section 201 within a Rural Agricultural zone. Other than subdivision of the sixty (60) acre subject property desired by Applicants, no other improvements are proposed for Lot No. 2 at this time.

The address of Applicants' property has been and remains associated with Brooksmill Road. The front door and façade of Applicants' home faces north and east toward Rabbit Lane. Rabbit Lane, however, is located a significant distance from Applicants' home. No road or driveway has ever been constructed on the sixty (60) acre property to provide any access to Rabbit Lane.

Upon construction of the six (6) residences along Brooksmill Road, all inspections were completed by the Township and occupancy permits were issued. The land area of the cul-de-sac providing access to Applicants' driveway and residence is owned by the Applicants and is part of designated Lot No. 1. The cul-de-sac as constructed has no curbs or sidewalks. Lot No. 7 has direct driveway access from the abutting cul-de-sac to its single-family residence. Lot No. 4 has direct driveway access to Brooksmill Road rather than the cul-de-sac.

### **DISCUSSION AND CONCLUSIONS**

Applicants' large property has frontage on two right-of-ways being Rabbit Lane and Brooksmill Road. It is undisputed that Rabbit Lane is dedicated to the Township and public road. Brooksmill Road, being approximately 536 ft. in length, connects directly from Manada Bottom Road to Applicants' western property line. In 1993, a recorded subdivision plan inclusive of Brooksmill Road identified it as being tendered for dedication to public use. There

is no formal record of acceptance by the Township of a dedication of Brooksmill Road. It is also undisputed however that the Township has plowed and maintained that portion of Brooksmill Road to Applicants' property line at the existing cul-de-sac.

East Hanover Township Zoning Ordinance Section 201.5.2.A requires a minimum lot width of 150 ft. for single-family detached dwellings which are located in a Rural Agricultural zone. The nearest public street and right-of-way to Applicants' constructed home is Brooksmill Road and it is of not sufficient width, i.e. being 60 ft., where it joins Applicants' property line to meet the requirements of the Zoning Ordinance at the building setback line. Therefore, a variance shall be required.

Furthermore, Section 308 of the Zoning Ordinance also requires access for the property to a public street more specifically:

“Section 308 Required Vehicle Access.

Every building hereafter erected or moved shall be on a lot adjacent to a public street or with access to an improved private street. Erection of buildings without approved access shall not be permitted. Approved access shall be defined in terms of the subdivision and land development ordinance, as may be amended from time to time for street design or as subsequently provided for by the Township. Access to lots containing single-family dwellings shall be via driveways (*see* Section 309); access to lots containing other uses shall be via access drives (*see* Section 310).”

Brooksmill Road does not specifically meet the requirements of Section 308 and the area designated as Lot No. 1 would not have access to an accepted public right-of-way or an approved private street. Therefore, a variance shall be required.

With respect to both of these requests Applicants' have proffered that the variances are warranted by the doctrine of vested rights. Upon consideration of all the evidence and testimony presented, the Board is persuaded that the requirements for granting such variances are satisfied.

Pennsylvania Courts have recognized and outlined five factors that are to be considered and weighed in determining whether vested rights have been acquired to entitle a grant of a variance. These factors include: due diligence in attempting to comply with the law; good faith throughout the proceedings; expenditure of substantial unrecoverable funds; expiration without appeal of the period during which an appeal could have been taken from the issuance of the permit; and insufficiency of evidence to prove the individual property rights or public health, safety or welfare would be adversely affected by the use of the permit. Petrosky v. Zoning Hearing Board of Township of Upper Chichester, Delaware, 485 Pa. 501, 402 A.2d 1385 (1979). Furthermore, all five factors are not an absolute requirement to find that a vested right has been acquired. Mirkovic v. Zoning Hearing Board of Smithfield Township, 149 Cmwlth. Ct. 587, 613 A.2d 662 (1992); Highland park Community Club v. Zoning Board of Adjustment of the City of Pittsburgh, 82 Pa. Cmwlth. Ct. 380, 475 A.2d 925 (1984), *aff'd*, 509 Pa. 605, 506 A.2d 887 (1986)

It is not disputed that pursuant to the terms of Zoning Ordinance Section 201 that a building permit was issued to Applicants in July 2017 for construction of their home at the specific western end of their property as noted in the Application for Variances and Applicants' Exhibit Nos. 2 and 3. Extensive required storm water management controls and facilities were designed, approved by the Township, constructed and implemented in order to obtain a building permit and ultimate approval for occupancy. All of such efforts were pursued and completed in the context of the existing physical conditions of the property and Brooksmill Road as a right-of-way serving six (6) individual previously permitted, constructed, and approved residences.

The Board is persuaded that Applicants proceeded both in good faith and with due diligence to comply with the zoning and other Township ordinances. It is evident that the only



and primary access to the home would be by means of another driveway connected to Brooksmill Road. Sheer distance of the home from Rabbit Lane rendered access impractical if not logically cost prohibitive.

Applicants' further expended and invested substantial sums in excess of \$600,000 with respect to the acquisition of the property, construction of the home and related stormwater management facilities. Construction of all the facilities, structures, access drives and related amenities have been completed with funds that are unrecoverable should the variances and access be denied from Brooksmill Road.

There is no evidence before the Board that the building permit was considered to have been issued in error at the time and it otherwise has not been revoked. Upon approval and issuance of the permit no conditions were stipulated for access to be provided to the residence from Rabbit Lane or that any extension of Brooksmill Road was to occur or otherwise be dedicated to the Township. Furthermore, no conditions either requiring or prohibiting further development of the remainder of the property, whether relating to Lot No. 1 or Lot No. 2, were imposed. The applicable appeal period after the permit's issuance in July 2017, which is undisputed, has expired without any appeal.

The undedicated cul-de-sac is owned by Applicants' and is a part of Lot No. 1. The cul-de-sac abuts two neighboring properties, one of which is parcel No. 25-009-085 (Lot No. 7) that maintains a direct driveway access from the cul-de-sac to a residence. The Board is persuaded that there is an insufficiency of evidence to establish that the individual property rights of the Applicants, or Lot 7 owners, or the public health, safety and welfare are adversely affected by this permit that was issued and construction which ensued. Upon even further development of

Lot No. 2, neither the extension of Brooksmill Road or other road from Rabbit Land is necessarily precluded.

Applicants' are maintaining their rights vested with respect to the permit and approvals previously received without conditions of access from Rabbit Lane, additional improvements or further extension of Brooksmill Road. When a municipality has issued a building permit and the development is completed in conformity with that permit, as was done in this case under the circumstances presented, the owners can acquire an incontestable right to the use of the property in accordance with the permit and approvals that were granted. Neshaminy Plaza II v. Kelly, 21 Pa. Cmwlth. 469, 346 A.2d 884 (1975). Such vested rights may be sustained even where a violation of the zoning ordinance has occurred. See, Mirkovic v. Zoning Hearing Board of Smithfield Township, 149 Cmwlth. Ct. 587, 613 A.2d 662 (1992).

Upon consideration and application of the standards for granting a variance as set forth in Zoning Ordinance Section 604.4, where relevant, the Board is also persuaded that such conditions are satisfied and that an unnecessary hardship exists. It is Applicants' burden of proof to establish that an unnecessary hardship exists. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1987).

The Board is persuaded that an unnecessary hardship exists and the property is subject to unique circumstances and conditions, topography and location. The sixty (60) acre property is significantly irregular in shape and size, situated amongst other existing properties and has limited access to roadways.

Although the evidence presented before the Board as to the origin of this area points back to a time in the early 1990's when more substantial development of the subject property may have been anticipated or possible, such further development did not occur. The development of

the property, subdivision of the individual residential building lots, the issuance of driveway and building permits for these residence, including the subject property, have all created unique circumstances and conditions.

Although a higher density subdivision might have been projected at one time for this property, nevertheless single-family residences had then been approved, permits issued and homes built upon the properties with direct access from an incomplete Brooksmill Road. However, when development was approved for the area designated as Lot No. 1, there were no requirements, reservations or restrictions placed upon the property with regard to its future development or with respect to the area designated as Lot No. 2. On the contrary, construction of a substantial single-family residence was allowed to take place and stormwater management controls were required and installed. Furthermore, no development or subdivision plans were submitted between 1994 and 2017. The Board is persuaded such circumstances supports acknowledgement of an abandonment of the original proposed development as conceived from 20 years prior.

Not providing the variances to Applicant from the requirements of Zoning Ordinance Sections 201.5.2.A and 308 would result in impractical, if not significantly financial, consequences. Access from Rabbit Lane to the location of Applicants' home would be of an inordinately substantial distance and traverse significant variations in terrain. The Board is persuaded that because of the physical circumstances and conditions of the property and prior development of Brooksmill Road, the location of Applicants' existing home and the prior allowance of its development, there is no possibility the property can be developed in strict conformity with the provisions of the Ordinance. Furthermore, the Board finds that such an unnecessary hardship has not been created by the Applicant.

The Board is persuaded that the if variances from the minimum lot width requirements and the road access as required by Zoning Ordinance Section 308 are granted, neither the essential character of the zone and neighborhood in which this property is located, nor the appropriate use or development of adjacent properties, would be substantially or permanently impaired, or be detrimental to the public welfare. The predominant character of the zone and area is that of single-family residences of various sizes from small to large lots. The area designated as Lot No. 1 and Applicants' land is already substantially developed as a single-family residence. Access is necessary to this property and is a logical extension from Brooksmill Road which is in closest proximity to the residence.

By reason of the foregoing the Board is also persuaded that the variances will afford the minimum relief that will be necessary and represent the least modification of the possible Ordinance in question. No physical changes are proposed to Applicants' property. The area designated as Lot No. 2, if subdivision is ultimately approved, will itself have direct access from Rabbit Lane and presents an ability for such proposed lot to conform to the requirements of the Ordinance.

The Zoning Board in approving variance applications pursuant to Zoning Ordinance Section 604.4.9 may attach conditions considered necessary to protect the public welfare and the purposes of the zone, including conditions, which are more restrictive than those established for other uses in the same zone. The Board considers such conditions reasonably necessary in this case in order to assure that a minimum variance shall continue and any non-conformity with the ordinance is not increased. It is also of concern for the Board in granting the variance that the adjoining property parcel No. 25-009-085 (Lot No. 7) continues to have appropriate access to Brooksmill Road. Such conditions are also necessary to assure that the requirements set forth in

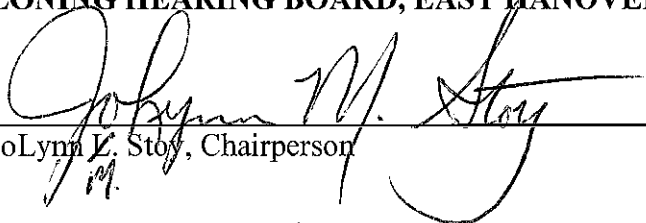
Section 604.4 of the Zoning Ordinance continue to be met as well as the purposes, intent and objectives of the Zoning Ordinance and the Township comprehensive plan.


**DECISION**


For all of the reasons previously set forth, evidence and testimony presented, the East Hanover Township Zoning Hearing Board does hereby GRANT the Application for Variances of Paul W. Navarro and Ashley M. Navarro from Section 201.5.2.A and Section 308 of the Zoning Ordinance, subject to the following:

- 1) The variance from Section 201.5.2.A is granted conditioned upon the minimum lot width of Lot No. 1 being no less than as presented on the "Final Subdivision Plan" which has been submitted as part of the Application for Variances before the Board.
- 2) The variance from Section 308 is subject to the condition that the adjoining property, being parcel No. 25-009-085 (Lot No. 7), shall retain no less than its current access and location to Brooksmill Road.

**ZONING HEARING BOARD, EAST HANOVER TOWNSHIP**

  
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JoLynn E. Stoy, Chairperson

  
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Shirley Allison, Member

  
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Mark Stremmel, Member