

BEFORE THE ZONING HEARING BOARD OF DICKINSON TOWNSHIP
CUMBERLAND COUNTY, PENNSYLVANIA

In re: Application of Teri Stephens : Docket No. 2012-02
: :
: Appeal from Zoning Officer Decision;
: Application for Use Variance

PRESIDING: Richard Cantor, Vice-Chairman;
PRESENT: Gerald Eby, Member

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. The Applicant is Teri Stephens, (hereinafter "Stephens"), an adult individual who owns and resides at 2 Minich Drive, Carlisle, Pennsylvania (hereinafter "property").
2. Applicant's property is located in the Low Density Residential District (LDR).
3. Applicant's property is located within a subdivision and her property is improved with a barn that was in existence at the time the lots in the subdivision were created from the original farm tract.
4. Applicant desires to renovate the barn and operate a psychotherapy office from the barn.
5. Applicant was denied a zoning permit to conduct the psychotherapy office from the barn and filed an appeal to the zoning officer's determination. In the alternative, applicant seeks a use variance to allow the operation of the psychotherapy office in the LDR District.

6. A hearing was held on October 2, 2012 at 6:00 p.m. at the Dickinson Township Municipal Building, 219 Mountain View Road, Mount Holly Springs, PA 17065, with all notices provided as required by law.

7. The matter was continued until October 24, 2012 for a decision from the Board.

8. Michael Gennett, zoning hearing board member, recused himself from this application and appeared at the hearing and expressed opposition to the application.

CONCLUSIONS OF LAW

The recusal of Mr. Gennett in this case without the availability of an alternate resulted in this application being decided by two zoning hearing board members. A split vote resulted in the denial of the application. The prevailing opinion on this application is as follows.

The proposed Psychotherapy office is not specifically identified as a permitted use in the LDR District. However, "Home occupations" are permitted uses within the LDR District under section 205-5 of the ordinance. A home occupation is defined as an "accessory use customarily conducted within a dwelling or in a building accessory thereto providing that the use is clearly incidental and secondary to the use of the dwelling for dwelling purposes..." A list of home occupations is included in the definition, and "psychotherapy office" is not among the uses allowed as a home occupation.

"Professional office," as defined in the ordinance at section 205-5, includes a host of professional office uses. Following the list of uses which constitute professional offices, a catch-all statement is included, which says "and similar professions." The psychotherapy office is a "similar profession" to those listed under "Professional Office." There is no similar catch-all "and similar professions" language under "Home Occupation" and as such, a psychotherapy

office is a "Professional Office" under the ordinance. Thus, the zoning officer's refusal to grant a zoning permit was correct. Furthermore, the criteria for a use variance have not been met.

Finally, with respect to the "Use not provided for" under section 205-87, the proposed psychotherapy office is not a permitted use in the LDR District, and as such, is denied as a use in that District rendering section 205-87 inapplicable. Furthermore, the prevailing determination of the Board is that the psychotherapy office is not similar or compatible with the permitted uses in the district.

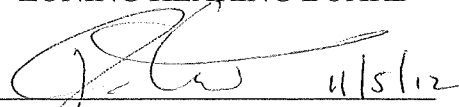
The non-prevailing opinion in this matter is that a psychotherapy office is similar to the uses described in the definition of Home Occupation and the application should be approved for that reason.

DECISION

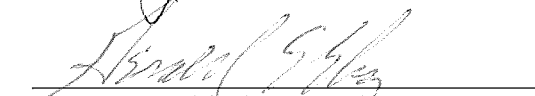
A motion was made by Gerald Eby to approve the application and the motion was seconded by Richard Cantor. Mr. Eby voted in favor of the motion and Mr. Cantor voted against the motion. The split vote results in a denial of the application. Mr. Gennett did not deliberate or vote on this application.

DICKINSON TOWNSHIP
ZONING HEARING BOARD

Date:


Richard Cantor, Vice-chairmen

Date:


Gerald Eby, Member

ANY AGGRIEVED PARTY HAS THIRTY DAYS TO APPEAL THIS DECISION TO THE COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA.