

IN RE: : BEFORE THE ZONING HEARING
APPLICATION OF RAYMOND AND : BOARD OF DICKINSON TOWNSHIP
ELIZABETH BANKERT : CUMBERLAND COUNTY, PENNSYLVANIA
: DOCKET NO. 2022-06

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION DENYING
APPLICANTS' APPEAL OF A DETERMINATION OF THE ZONING OFFICER AND
REQUESTS FOR ZONING VARIANCES**

The Applicants are appealing a determination from the Township's Zoning Officer regarding the keeping of a group 3 animal as an Emotional Support Animal on a residential property in the Low-Density Residential (LDR) Zoning District.

The Applicants also seek a variance from Section 205-104.B Noncommercial keeping of livestock minimum lot size requirement of three (3) acres for a Group 3 animal in the Low Density Residential District (LDR) as set forth in the Dickinson Township Zoning Ordinance. The Applicants are requesting a variance to allow a Group 3 animal on the Subject Property, which is 1.03 acres. In addition, the Applicants seek a variance from Section 205-104.B.3, which sets the animal density for Group 3 animals at 1 per 1 acre of pasture. The Applicants are requesting a variance of 0.2823 acres to allow for a fenced in pasture area of 0.7177 acres.

The initial hearing on the Application was held by the Dickinson Township Zoning Hearing Board on Wednesday, October 26, 2022 at 7:00 p.m. at the Dickinson Township Municipal Building, 219 Mountain View Road, Mount Holly Springs, PA 17065. The initial hearing was continued until Wednesday, November 23, 2022 at 5:00 p.m. at the Dickinson Township Municipal Building, 219 Mountain View Road, Mount Holly Springs, PA 17065.

FINDINGS OF FACT

1. The Applicants are Raymond Bankert and Elizabeth Bankert (the “Applicants”), who reside at 19 Holly Estates Drive, Gardners, Pennsylvania 17324.
2. The Applicants are the owners of property located at 19 Holly Estates Drive, Gardners, Pennsylvania 17324, (the “Subject Property”). The Parcel Identification Number is 08-16-0210-094.
3. The Subject Property is 1.03 acres in area, approximately .71 acres, of which is a pasture. The Subject Property is located in the Low Density Residential District (LDR).
4. The Applicant’s Property is currently improved with a single-family home.
5. The Subject Property is primarily a single-family residential property.
6. No Group 3 animal can be on a residential property of less than 3 acres.
7. Group 3 animals are permitted at a density of one per acre of pasture.
8. The Subject Property has less than 1 acre of pasture at .71 acres and cannot meet the 1 acre pasture requirement.
9. The neighborhood surrounding the Subject Property is low density residential.
10. The Applicants have requested that they be permitted to have a group 3 animal as an Emotional Support Animal on the Subject Property, to wit, a sheep weighing approximately 100 pounds.
11. By letter dated August 24, 2022, the Zoning Officer denied the Applicants’ request to have a group 3 Animal as an Emotional Support Animal on the Subject Property because the Subject Property does not meet the minimum lot size of 3 acres for a group 3 animal nor the

minimum of one acre of pasture area whether or not the group 3 animal is an Emotional Support Animal.

12. The Applicants appealed the determination of the Zoning Officer to the Zoning Hearing Board.

13. In support of their desire to have a group 3 Emotional Support Animal on the Subject Property, the Applicants submitted a letter from a Licensed Clinical Social Worker indicating that an Emotional Support Animal would reduce anxiety and provide a calming effect to the Applicants.

14. The letter, however, was written to comply with the Fair Housing Act, specifically with regard to a landlord tenant relationship, not an owner occupied single family dwelling.

15. In addition, the letter was not authenticated nor was any corroborating evidence presented by the Applicants.

16. The Applicants did not present sufficient, credible evidence to show that zoning officer committed an error of law or abused his discretion in determining that a group 3 animal as an Emotional Support Animal may not occupy the Subject Property.

17. The owners of the properties surrounding the Subject Property opposed Applicants' appeal to the Zoning Hearing Board

18. Notice of the initial hearing was duly advertised in The Sentinel, a newspaper of general circulation, on June 8, 2022 and June 15, 2022.

19. The Subject Property was posted on June 10, 2022.

20. Notification of the initial hearing was mailed by certified mail to surrounding property owners within 200 feet of the Subject Property on June 8, 2022.

21. At the initial hearing, the Zoning Hearing Board announced that the hearing would be continued until November 23, 2022 at 5:00 p.m. at the Dickinson Township Municipal Building, 219 Mountain View Road, Mount Holly Springs, PA 17065.

CONCLUSIONS OF LAW

1. Section 10910.2 of the Municipalities Planning Code (the “MPC”), 53 P.S. §10910.2, requires the Zoning Hearing Board to hear requests for variances. Section 910.2 further provides that in granting a variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the MPC and zoning ordinance.

2. Section 910.2 of the MPC further sets for the five (5) criteria, which must be satisfied in order to obtain a variance.

3. Section 909.1(2) of the MPC provides that the Zoning Hearing Board shall hear appeals from a determination of the zoning officer.

4. Section 205-104 of the Zoning Ordinance-Noncommercial keeping of livestock, permits the noncommercial keeping of livestock as an accessory use to a principal residence in the Low Density Residential District (LDR).

5. Section 205-104.B of the Zoning Ordinance regulates the number of Group 1, 2 and 3 animals that can occupy a property.

6. In order for the Applicant to have a Group 3 animal on the Subject Property, variances from Section 205-104.B and 205-104.B.3 are required.

7. The Applicants have the burden of proof to show that all five (5) criteria to obtain the variances have been met.

8. The Applicants did not present sufficient, credible evidence to show that they have met all (5) five of the criteria for the variances.

9. There are no unique physical circumstances or conditions, or exceptional topographical or other physical peculiar to the Subject Property that would cause an undue hardship on the Subject Property.

10. The Subject Property has been reasonably developed in accordance with the Zoning Ordinance without a variance.

11. There is no hardship on the Subject Property except for any hardship that was created by the Applicants.

12. If the requested variances were to be granted by the Zoning Hearing Board, the essential character of the neighborhood, being low density single-family residential, would be altered.

13. The variances requested by the Applicants would not represent the minimum variances necessary to afford relief.

DECISION

In view of the foregoing and having carefully considered the testimony and exhibits submitted to the Board, the appeal of the determination of the zoning officer is hereby denied. In addition, the requests for variances to the required minimum lot area and minimum pasture area on the Subject Property are denied.


VOTE

yes



Paul Strizzi, Acting Chairman

yes



Lisa Freer, Member
Feer

ANY PERSON AGGRIEVED BY THIS DECISION OF THE DICKINSON TOWNSHIP ZONING HEARING BOARD MAY APPEAL TO THE COURT OF COMMON PLEAS OF CUMBERLAND COUNTY. THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THIS DECISION.

MAILING DATE: December 20, 2022